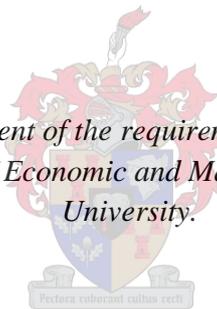


An evaluation of oversight and accountability by the fourth Parliament of the Republic of South Africa

by
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*Thesis presented in partial fulfilment of the requirements for the degree Master in Public
Administration in the Faculty of Economic and Management Sciences at Stellenbosch
University.*



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Declaration

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Abstract

Internationally oversight and accountability are regarded as two sides of the same coin, which are essential in ensuring that the electorate receives public value through service delivery and good governance. The Constitution of the Republic of South Africa obliges Parliament to ensure that mechanisms are in place for the executive to account in Parliament and Parliament to be able to maintain oversight on the executive's actions and/ or lack of action.

The main aim of this study is to evaluate whether the oversight and accountability mechanisms employed by the fourth Parliament of the Republic of South Africa are effective and if members of Parliament understand their role, function and mandate in overseeing the executive, thus holding the executive accountable for its actions and/ or lack of action.

Once the research problem and the rationale of the study are provided, an overview of the research design and methodology is given. The study proceeds to discuss the theoretical context on oversight and accountability and conveys the state of oversight and accountability in a number of selected international Parliaments to provide a limited international perspective on oversight and accountability. The study proceeds to explore the application of oversight and accountability within the South African context with the main focus being on the South African model of oversight and accountability, policy framework for oversight and accountability, and the mechanisms for conducting oversight and accountability employed by the fourth Parliament.

The study then provides an in-depth discussion on the research design and methodology to given an understanding of the hypothesis, conceptualisation and key variables. The discussion also includes issues of measurement, sampling methods and the research methodology that discusses the data collection methods, data capturing and data analysis. It concludes by considering the limitations of the study.

In order to provide evidence to support or disprove the hypothesis, an investigation was conducted on the mechanisms employed by the fourth Parliament in exercising its Constitutional mandate to oversee the executive and hold it to account. Two semi-structured questionnaires were administered to members of Parliament and managers that dealt with oversight and accountability during the fourth Parliament and the responses were processed by means of content analysis, consisting of tabulating the occurrences of content units by characterising the meaning in a given body of discourse in a systematic and quantitative fashion. From the findings, it is clear that challenges regarding how the mandate of oversight and accountability is implemented should be addressed and the results of Parliament's efforts to oversee the executive need to be supported with stronger systems to ensure effective oversight and accountability. Although the negative factors outweigh the positive factors, some positive factors are identified.

Generally, the Constitution of the Republic of South Africa is the policy base that informs the institutional processes and programmes on oversight and accountability. In terms of the Parliamentary mandate to oversee the executive members of Parliament understand the mandate and are supported with a budget in each financial year to oversee the executive. The programme of the fourth Parliament is not aligned to the established time frames for certain processes of the Money Bills Amendment Procedure and Related Matters Act no 9 of 2009. Members of Parliament enjoy immunity from prosecution and detention when in the chamber when it comes to issues of conduct.

The fourth Parliament Constitutionally understood legislative, policy and strategic framework matters, but there is no policy in place as an integral aspect of Parliament's strategic plan in relation to oversight and accountability, which reflects gaps in business planning and specific implementation activities. The institution lacks an administrative unit to carry out oversight and accountability implementation plans.

No institutional arrangements for the oversight of state institutions such as the South African Reserve Bank exist. There are no processes and guidelines for interaction and engagement of members of Parliament with ministers on issues of public concern. Parliament does not have electronic or manual systems in place for oversight and accountability. There is no database management system and tracking system, e.g. for resolution tracking.

Parliamentary debates, including questions and replies by the executive, are identified as of poor standard. With regard to petitions, there are no formal regulations in place to formally process submitted petitions and no standardised processes to submit petitions. The role of committees is important in Parliamentary oversight, but the findings indicate that the quality of reports that are produced by committees is of concern and contributes negatively to effective oversight of the executive. The quality of contributions in the preparation of the national budget is good and important. Parliament does not give enough value to the reports of Chapter 9 institutions and the time allocated for engagement with the institutions is not adequate. The role of the opposition to hold the executive accountable is not exclusive. The findings reveal that the electoral system hinders effective oversight. In addition, there are challenges in the implementation of an effective monitoring and evaluation system. The analysis of the findings and the main challenges identified provides sufficient evidence for the hypothesis of the study, namely that the oversight and accountability mechanisms employed by the fourth Parliament were ineffective and that members of Parliament did not understand their role, function and mandate in overseeing the executive and thus fails in holding the executive accountable for its actions and/ or lack of action.

The study concluded by providing a number of recommendations for addressing the challenges emanating from the analysis of the findings in order to enhance oversight and accountability. Only once the recommendations are implemented, it will be possible for the mechanisms employed by Parliament to generate effective oversight and thus ensure executive accountability.

Opsomming

Internasionaal word toesig en aanspreeklikheid beskou as twee kante van dieselfde munt wat noodsaaklik is om te verseker dat die kiesers openbare waarde ontvang deur dienslewering en goeie bestuur. Die Grondwet van die Republiek van Suid-Afrika verplig die Parlement om meganismes in plek te stel vir die uitvoerende gesag om verantwoording in die Parlement te doen en om die Parlement in staat stel om toesig oor die optrede van die uitvoerende gesag en/of die gebrek aan optrede te handhaaf.

Die hoofdoel van hierdie studie was om te evalueer of die toesig- en aanspreeklikheids meganismes wat deur die vierde Parlement van die Republiek van Suid-Afrika gebruik word, doeltreffend is en of lede van die Parlement hul rol, funksie en mandaat in die toesig oor die uitvoerende gesag verstaan en dus so die uitvoerende gesag aanspreeklik hou vir hul optrede en/of gebrek aan optrede.

Sodra die navorsings probleem en die rasionaliteit van die studie uiteengesit is, volg daar 'n opsomming van die navorsingontwerp en -metode. Die studie bespreek hiernaas die teoretiese konteks van toesig en aanspreeklikheid en gee die toestand van toesig en aanspreeklikheid in 'n aantal geselekteerde internasionale Parlemente weer om 'n beperkte internasionale perspektief op toesig en aanspreeklikheid te verskaf. Die studie verskaf dan 'n diepgaande bespreking van die navorsingontwerp en -metodologie en 'n begrip van die hipotese, konseptualisering en sleutelveranderlikes. Die bespreking sluit verder kwessies van meting, steekproefnemingsmetodes en die navorsingsmetodologie met betrekking tot die data-insamelingsmetodes, datavaslegging en data –analise in. Dit sluit af met 'n beskouing van die studie se die beperkinge.

Die studie gaan voort deur die toepassing van toesig en aanspreeklikheid in die Suid-Afrikaanse konteks met die hoofokus op die Suid-Afrikaanse model van toesig en aanspreeklikheid, beleidsraamwerk vir toesig en aanspreeklikheid, en

die meganismes vir die uitvoering van toesig en aanspreeklikheid in diens van die vierde Parlement te verken .

Ten einde die hipotese te ondersteun of weer te lê, is 'n ondersoek onderneem na die meganismes wat deur die vierde Parlement ingespan word in die uitoefening van sy grondwetlike mandaat om toesig oor die uitvoerende gesag te hou en dit aanspreeklik te hou. Twee semi-gestruktureerde vraelyste is afgeneem by Lede van die Parlement en Bestuurders wat toesig en aanspreeklikheid in die vierde Parlement handhaaf. Die antwoorde is deur middel van inhoud-analise getabuleer wat behels het dat die kere wat die inhoud-eenhede voorkom, verwerk is deur hul betekenis te tipeer binne 'n gegewe diskoerskonteks volgens 'n sistematiese en kwantitatiewe styl. Deur die bevindinge te beskou, is dit duidelik dat die uitdagings aangaande hoe die mandaat van toesig en aanspreeklikheid geïmplementeer word, aangespreek moet word en dat die resultate van die Parlement se pogings om toesig oor die uitvoerende gesag te hou met behulp van sterker stelsels ondersteun moet word om effektiewe toesig en aanspreeklikheid te verseker. Selfs al oorskadu die negatiewe faktore die positiewe faktore, is 'n paar positiewe faktore geïdentifiseer.

Oor die algemeen is die Grondwet van die Republiek van Suid-Afrika die beleidbasis van die institusionele prosesse en programme aangaande toesig en aanspreeklikheid. Lede van die Parlement moet die Parlementêre mandaat om toesig te hou verstaan en ondersteun word met 'n begroting in elke boekjaar. Die program van die vierde Parlement is nie in lyn met die gevestigde tydraamwerke vir sekere prosesse van die Geldwetsontwerpe Wysigingsproses en Verwante Aangeleenthede Wet. Lede van die Parlement geniet immunititeit teen vervolging en aanhouding wat betref hulle gedrag wanneer die huis sit.

Die vierde Parlement verstaan die Grondwet, wetgewende beleid en strategiese raamwerk, maar daar is geen beleid in plek wat deel vorm van die Parlement se strategiese beplanning in verband met toesig en aanspreeklikheid

wat gapings weerspieël in sakebeplanning en implementering van spesifieke aktiwiteite nie. Die instelling het nie 'n administratiewe eenheid wat implementeringsplanne vir toesig en aanspreeklikheid kan uitvoer nie.

Geen institusionele reëlings vir die toesig van staatsinstellings soos die Reserwebank bestaan nie. Daar is geen prosesse en riglyne vir interaksie en betrokkenheid tussen Lede van die Parlement en Ministers oor kwessies van openbare belang nie. Die Parlement het nie elektroniese stelsels of stelsels wat met die hand werk in plek vir toesig en aanspreeklikheid nie. Daar bestaan tans nie 'n databasis-bestuurstelsel en 'n naspoorstelsel vir byvoorbeeld die naspoor van oplossings nie.

Debatte, insluitend vrae en antwoorde deur die uitvoerende gesag, word geïdentifiseer as van swak standaard. Met betrekking tot petisies, is daar geen formele regulasies in plek waarvolgens ingediende petisies geprosesseer kan word nie en daar is ook geen gestandaardiseerde prosesse om petisies formeel in te dien nie. Die rol van komitees is belangrik in Parlementêre oorsig, maar die bevindinge dui daarop dat die gehalte van die verslae wat deur komitees gelewer word kommer wek en 'n negatiewe uitwerking op die doeltreffende toesig van die uitvoerende gesag het.

Die gehalte van die bydraes in die voorbereiding van die nasionale begroting en is goed en belangrik. Parlement gee nie voldoende aandag en waarde aan die tyd toegeken vir afsprake aan die instellings van verslae van hoofstuk nege instellings. Die rol van die opposisie om uitvoerende gesag aanspreeklik te hou is nie eksklusief nie. Die bevinding dui daarop aan dat die kiesstelsel verhinder doeltreffende toesig. Daarbenewens is daar uitdagings om 'n doeltreffende monitering en evaluering stelsel te implementeer. Die rol van die opposisie om die uitvoerende gesag aanspreeklik te hou is nie eksklusief nie. Die bevindinge dui daarop dat die kiesstelsel doeltreffende toesig verhinder. Verder is daar uitdagings met betrekking to die implementering van 'n doeltreffende kontrolering- en evalueringstelsel. Die ontleding van die bevindinge en die belangrikste uitdagings wat

geïdentifiseer is, verskaf voldoende bewyse vir die hipotese van die studie, naamlik dat die toesig- en aanspreeklikheidsmeganismes in diens van die vierde Parlement ondoeltreffend was en dat Lede van die Parlement hul rol, funksie en mandaat van toesig oor die uitvoerende gesag nie verstaan het nie en dus daarin faal om die uitvoerende gesag aanspreeklik te hou vir sy optrede en/of gebrek aan optrede.

Die studie sluit af met 'n aantal aanbevelings met betrekking tot die uitdagings wat voortspruit uit die ontleding van die bevindinge om toesig en aanspreeklikheid te verbeter. Slegs wanneer aanbevelings geïmplementeer word, sal dit moontlik wees vir die meganismes wat deur die Parlement ingespan word om effektiewe toesig en dus uitvoerende aanspreeklikheid te verseker.

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LIST OF ACRONYMS AND ABBREVIATIONS

AGSA	Auditor-General of South Africa
BRRR	Budgetary Review and Recommendation Reports
CGE	Commission for Gender Equality
CRL	Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
DoRB	Division of Revenue Bill
ICASA	Independent Commission Authority of South Africa
IEC	Independent Electoral Commission
IPU	Inter-Parliamentary Union
ISD	Institutions Supporting Democracy
IT	Information Technology
MP	Member of Parliament
MTBPS	Medium Term Budget Policy Statement
MTEF	Medium-Term Expenditure Framework
NA	National Assembly
NCOP	National Council of Provinces

NP	National Party
PBO	Parliamentary budget office
PC	Portfolio Committee
PFMA	Public Finance Management Act
PLA	Plurinational Legislative Assembly
PMG	Parliamentary Monitoring Group
PP	Public Protector
SAHRC	South African Human Rights Commission
SC	Select Committee
SCoAG	Standing Committee on Auditor-General
SCOPA	Standing Committee on Public Accounts
UK	United Kingdom

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CHAPTER 1: AN INTRODUCTION TO THE STUDY

1. Introduction

This first chapter serves as a project plan, which gives guidance in identifying the research statement to be addressed through the various stages until the conclusion stage of the study. The rationale of the study, its aims and objectives are covered in this chapter. The chapter explains the reasons for studying, the relevance of the selected topic, and the research questions that are asked in order to cover the topic fairly. An overview of the research design and methodology is also provided. Finally, the chapter concludes with an outline of the thesis by giving a research sequence.

1.1 Research problem

The research problem arises from the fact that the members of the executive are appointed by the President from members of Parliament (MP) and the norm is that the ruling party appoints from its own ranks in Parliament. The following question arises as to whether it is possible to ensure acceptable oversight where the same members of the majority party in Parliament are expected to hold their counterparts to account and oversee their actions without damaging the political party name to which they all belong? The problem being researched is not the difficulty of effective parliamentary oversight in a Parliament with strong majority party representation and to a certain extent domination.

According to Daniel and Silkstone (2007:2) “the relationship of overseeing and accounting by the respective parties is potentially fraught with difficulty. This is especially so in a political system, such as in South Africa, where there are close links between the executive and legislature for example, the executive is not only chosen from the legislature but is also primarily from the leadership of the majority party. In addition, as is the case in many other parts of the world, South Africa has a strong party-based system. While a strong party system is an important democratic tool, this can hamper effective oversight, as members

of the legislature may be reluctant to call to account a government that is made up prominently by leaders of their party”.

The Constitution of the Republic of South Africa (1996) (hereafter the Constitution) establishes state institutions supporting constitutional democracy, commonly referred to as Chapter 9 Institutions. These institutions are independent, and subject only to the Constitution and law, and are expected to be impartial, exercise their power and perform their functions without fear, favour or prejudice according to section 181(2). The Chapter 9 Institutions have powers to exercise oversight over the executive and other organs of state. The Chapter 9 Institutions must account for their budget spending to the National Assembly (NA), which is a house of Parliament and report to the NA on their activities and performance at least once a year. They have to account to the same institution that is perceived not to have strong mechanisms in place to enforce their recommendations.

Accountability can be measured against objectives put in place for example by the Public Finance Management Act of 1999 (Republic of South Africa, 1999) and general statutes. The reality is that very few measurable objectives can be found in legislation regarding the oversight responsibility. The scarcity of such measurable objectives makes the oversight function difficult. According to Nijzink (2002:87) “despite the constitutional imperatives, South African legislatures have not been particularly active as overseers of government action”. One of the problems that Nijzink raises is that there is little agreement among members as to what oversight means in practice and how it should be carried out (Nijzink, 2002:88).

Due to political party “closeness” of the majority of members of Parliament and the executive, the role of holding the executive to account has been left mainly to be the role of the opposition in the legislature. According to Nijzink (2002:88) “procedures are generally designed to enable the legislatures to fulfil their law-making responsibility effectively and MPs and MPLs understand this responsibility. But procedures for holding the government accountable are less

well established and the interviews conducted for the legislative Landscape Study suggested that politicians have a much poorer understanding of oversight than of their law making-making responsibility”.

1.2 Rationale of the Study

The rationale of the study is discussed by indicating the aims and objectives of the study and immediately through a discussion on the reason and relevance of the selected topic, in evaluating oversight and accountability by the fourth Parliament of the Republic of South Africa.

1.2.1 Aims and objectives of the study

The study seeks to evaluate the current situation pertaining to oversight and accountability in order to contribute to the body of knowledge in order to broaden the understanding of the implications of oversight and accountability. Furthermore, the study’s aims and objectives are to provide an overview of the concepts of oversight and accountability.

The study aims to evaluate the integrity of public governance through oversight and accountability mechanisms in order to find out if they can be used to safeguard government against corruption, nepotism, abuse of power and other forms of inappropriate behaviour. The study also aims to evaluate the process through which the Parliament of the Republic of South Africa monitors responses to Parliamentary recommendations emanating from its own reports. In addition, the study aims to evaluate to what extent party-political affiliation and responsibility to defend the party that a member of Parliament belongs to led to a situation where there was a lack of robust debates and questions in Parliament as mechanisms for the institution to conduct genuine oversight and ensure accountability by the executive. According to Ahmed (2011:70) “one of the basic factors affecting oversight or its effectiveness is a strong party based system”.

The study accordingly seeks to:

- Define and discuss the importance of oversight and accountability.
- Outline the current oversight and accountability mechanisms.
- Question whether the oversight and accountability mechanisms put in place by the fourth Parliament were successful to oversee and hold the executive accountable.
- Evaluate the extent to which the MP's understood their responsibility, role and mandate when it comes to oversight and accountability in the fourth Parliament by administering a questionnaire that evaluate their understanding of the different aspects pertaining to oversight and accountability.
- Evaluate the degree of effectiveness of oversight and accountability during the fourth Parliament.
- Investigate the degree to which the fourth Parliament effectively performed and upheld its constitutional mandate to oversee and ensure accountability by the executive.

1.2.2 Reason and relevance of the selected topic

In its findings, the research tries to establish the extent of Parliamentary oversight towards ensuring constitutionalism and government accountability under the Constitution of the Republic of South Africa. The practice of the fourth Parliament regarding oversight and accountability is evaluated against the guidelines set out in the Constitution. In instances where some gaps and flaws are noticed or identified, the findings are hope to assist those who are primarily in charge, to resolve or improve the gaps identified in order for the following Parliaments to align their strategies and planning so they can fulfil their constitutional mandate.

The findings will help the MPs to understand the importance of Parliamentary oversight and accountability of the executive and instil a culture of taking these constitutional mandates seriously. The study will also contribute to the body of knowledge about whether the existing mechanisms and practices of

Parliamentary oversight in South Africa are effective in ensuring constitutional adherence and moreover meaningful executive accountability.

Furthermore, the study contributes in articulating the factors that affect the oversight mandate of Parliament and it could be used as a guide to the MPs of future Parliaments on how they should play their role of Parliamentary oversight. In addition, the study assists the general public and scholars to understand the conspicuous issues of oversight and accountability and their nexus with constitutionalism. The vision of the fourth Parliament was “To build an effective people’s Parliament that is responsive to the needs of the people and that is driven by the ideal of realising a better quality of life for all the people of South Africa” (Parliament of the Republic of South Africa, 2010) (hereafter referred to as Parliament). It is therefore important that Parliament focus on oversight and accountability of the executive to ensure the needs of people are met.

1.3 Research questions

Influenced by the research problem stated above, the primary research question of the study is as follows:

- Did the oversight and accountability mechanisms employed by the fourth Parliament achieve its constitutional mandate to oversee and hold the executive accountable?

The secondary research questions are:

- To what extent has the fourth Parliament ensured effective oversight and accountability through its constitutional mandate of oversight?
- What mechanisms are available for Parliamentary oversight in the NA and National Council of Provinces (NCOP)?
- How significant was effective oversight in ensuring proper accountability by the executive during the fourth Parliament?

1.4 Overview of research design and methodology

These following subsections give an indication as to the approach used in conducting the study, because the approaches used can vary considerably in a scientific enquiry. The overview of the research design and methodology put's in place the procedure for conducting the study.

1.4.1 Research design

The study used a quantitative research design. Its investigation is evaluation research that seeks to question whether the oversight and accountability mechanisms employed by the fourth Parliament achieved its constitutional mandate to oversee and hold the executive accountable. The research design can be classified an empirical, employing hybrid, numerical and textual data with medium control (Mouton, 2012:158). The reason for choosing this research design is that it will help in assessing whether the oversight and accountability mechanisms were properly implemented by the fourth Parliament by providing accurate evidence.

1.4.2 Research methodology

The research methodology followed was to utilise a semi-structured questionnaire, which was distributed to the members of Parliament (Annexure 1) and managers responsible for oversight and accountability in Parliament (Annexure 2) in the fourth Parliament. These are chosen because of their strategic knowledge and experience with oversight and accountability. A probability sample in the form of a simple random sampling technique was utilised for data collection, where subjects were systematically selected from the population. The goal was to select a representative sample. Furthermore, data was collected on theory, background, and concepts related to oversight and accountability that were based on the literature sources reviewed. The questionnaires aimed to determine the state of oversight and accountability in

the fourth Parliament and to identify the challenges experienced during this Parliament.

The unit of analysis in this research is the fourth Parliament, MP's and the managers that were responsible for managing issues that dealt with oversight and accountability in the fourth Parliament. The questionnaire was distributed electronically and aimed to acquire data that could shed light on the state of oversight and accountability in the fourth Parliament.

1.5 Research report sequence

In Chapter 1, the research topic is introduced; a background and an overview of the study are provided in order to outline how the research will be executed. This chapter touches on the aims and objectives of the study, the reason for the study, and the relevance of the study. The specific primary research question and secondary questions are expressed and an overview of the research design and methodology is given.

Chapter 2 of the study takes a closer look at the literature related to the research topic. The key concepts related to the topic are defined. These include accountability and oversight. An in-depth theoretical background and rationale for oversight and accountability is given, with the focus on both local and international literature in order to provide a solid theoretical premise for the study. An international context relating to oversight and accountability is provided by considering selected international Parliaments. Chapter 3 focuses on the composition and mandates of the Parliament of the Republic of South African. Institutional and legislative context of oversight and accountability in South Africa. The South African model of oversight and accountability, the legislative and policy framework for oversight and accountability, and an overview of general implementation strategies are discussed.

Chapter 4 explains the research design and methodology in detail, while

Chapter 5 presents the findings from the investigative study into how the constitutional mandate of oversight and accountability was handled by the fourth Parliament based on the questionnaires (Annexure 1) and (Annexure 2) feedback received. In processing the data, the focus was on evaluating the effectiveness of oversight and accountability mechanisms and implementation strategies in the fourth Parliament. Through the findings presented, challenges experienced and possible gaps are exposed.

Chapter 6 outlines the research findings and give an overview of the main conclusions of the study by means of summarising and discussing the significant findings in the context of the stated research problem, literature review conducted, and stated methodology. Finally, recommendations are provided in order to improve the standard and effectiveness on oversight and accountability. This last chapter can be said to have as its main purpose the provision of a general conclusion and recommendations that seek to make Parliament employ effective Parliamentary oversight and accountability by the executive to ensure sound constitutional oversight and accountability.

1.6 Summary and deductions

This chapter introduces the research problem, rationale and objectives of the study, reason and relevance of the selected topic and the research questions (primary and secondary) influenced by the research problem in order to evaluate how the constitutional mandate of oversight and accountability was applied by the fourth Parliament. An overview of the research design and methodology is provided as to assist with the evaluation research that seeks to question whether the oversight and accountability mechanisms employed by the fourth Parliament achieved its constitutional mandate to oversee and hold the executive accountable. The research approach employed by the study is the quantitative approach. A simplified research report sequence is provided for easy logical following through the various attempts to solve the research problem.

CHAPTER 2: THEORETICAL FRAMEWORK ON OVERSIGHT AND ACCOUNTABILITY

2.1 Introduction

In this chapter, the main concepts of oversight and accountability are defined and investigated in order to provide a basis for conducting the rest of the study. The theoretical context of oversight and accountability as essential elements of democracy and representativity is discussed. The rationale underlying this chapter touches on aspects such as the functions, characteristics, benefits and challenges of oversight and accountability.

An international perspective on oversight and accountability in developed and developing nations are studied as secondary data in order to help the researcher understand the best practices employed across the globe. The research considers a number of publications which include related journals, Parliament annual reports, and textbooks. As the study intends to strengthen democracy by promoting oversight and accountability as mandated by the Constitution of the Republic of South Africa, it becomes important to discuss democracy as the major contributor to greater legitimacy of oversight and accountability before continuing.

2.2 Oversight and accountability and related concepts

This chapter starts with a definition of democracy and gives a description of the various types of democracy. The concept of oversight and that of accountability gets a comprehensive definition and description in order to illustrate the relationship between the two concepts. Once that is achieved, the rationale for oversight and accountability is discussed. Literature on the composition and mandates of Parliament as an institution to implement oversight and accountability is further considered. In addition, literature on the state of oversight and accountability in other international Parliaments forms part of the

literature reviewed as a way of determining better practices and common challenges.

2.2.1 Democracy

Definition

The general definition of democracy is that it is the government of the people by the people. Ranney (1971:76 as cited in Brynard, 1996:53) defines democracy as “a form of government organised in accordance with the principles of popular sovereignty, political equality, popular consultation, and majority rule”. For democracy to function the people (citizens) should be at the ‘centre’ of what and how the government conducts itself. The definition by Ranney could also be interpreted to mean that popular consultation in a democracy should also be afforded to the citizens using such institutions as Parliament by means of clear and achievable public participation programmes.

Types of democracy

- (a) Direct democracy-According to Calland (1999:61) “The theory of direct democracy is based on the premise that ‘the people’ assemble and every citizen is directly involved in every government decision”. From Calland definition it can be argued that direct democracy is characterised by referendums or elections. Because of the large size of populations in today’s world opportunities for true direct democracy are limited.

- (b) Participatory democracy-Calland (1999:62) indicates that “it is important not to underestimate the growing crisis in other pluralist; liberal democracies throughout the past century when declining voting levels, lack of real political choice, rise of shadow security governments and decay in popular trust in the electoral process have prompted the need for renewing public participation. Public participation process strengthens institutions of representative democracy, democratising those institutions”. This view is important because even though the Constitution (section 42(3) and 55(2) emphasises the need for mechanisms to ensure that all Executive organs

of state in the national sphere of government are accountable to the NA. The need for these mechanisms also arise as they are required to maintain oversight on the exercise of the executive. The rationale is that the political environment should promote such a mechanism through the elected representatives on the behalf of the citizens of the country.

(c) Representative (or parliamentary) democracy-According to Calland (1999:62) representative democracy assumes that elected representatives must represent the views of the people – the electorate – and “representation is defined as a limited mandate where the representative is empowered to speak or vote, reflecting the view of the constituency”. This is the basis and rationale for this study, as the representatives in the legislature represent the views of the people on how the executive should conduct itself and what developmental policies should be implemented to better the lives of the citizens who are also the electorate.

2.2.2 Oversight

Definition

According to Yamamoto (2007:9) on his comparative study of 88 national legislatures in 2003, Parliamentary oversight is “the review, monitoring and supervision of the Executive government, but also of all public agencies”. Barkan et al. (2003:1) in turn argue that a legislature is effective only if it takes on a “watchdog” role over the executive. In simple language, oversight is mainly an activity of Parliament, requiring it to keep an eye on the activities of the executive and holding the executive to account (which will be later discussed) on behalf of the represented people. According to Oliver (1994:130) cited by Corder Hugh, Jagwenth Saras, Soltau Jred (1999:8) “Parliament oversight primarily represents the power of the representative body to affect and have control over the executive and other institutions as applicable”.

Oversight includes financial scrutiny and watching the overall activities of the executive in policy implementation, proper and effective execution including

how the law is enforced as per the specific intentions and requirements of the Parliament and constitutional objectives. This is confirmed by Madue (2012:433) when He indicates that in almost every country, governance and oversight functions by legislatures are predicated by the provision of the Constitution.

According to Shija (2012:5)“in the Westminster Model of Parliament democracy, legislatures have been bestowed with the power and authority to constantly and judiciously check how and why the authorities in government handle national resources in relation to the welfare of the population”. South Africa’s constitution-makers were well aware of the difficulties of holding the executive to account in parliamentary system. For this reason, the Constitution spells out the oversight role of South Africa’s legislatures very clearly (Nijzink, 2002:87).

It is worth noting that, according to Parliament (2009) on the report of independent panel on assessment of Parliament “in any Parliamentary system, oversight can only be effective if Parliament asserts its independence and embraces the authority conferred on it by the Constitution. There are various mechanisms which Parliament may use to hold the executive to account, but it is the integrity, independence and authority with which these mechanisms are applied that will ultimately determine the extent to which oversight contributes to improved governance”. For effective oversight to take place and be realised, a common understanding of what oversight is becomes important among the MPs guided by the constitutional obligations. This will also ensure that accountability (to be discussed below) is realised and thus leading to good governance by the executive.

From the above discussion on oversight, one can agree with Mansura (2012:3) when he argues that “the typical definition of oversight is supervision, watchful care, management or control in the parliamentary sense”. The watchful eye function over the executive activities includes also its state parastatals and agencies. The primary role of Parliamentary oversight leads to its ability to hold

the executive government accountable for its plans and activities, and monitor and evaluate also the implementation level.

According to Ahmed (2011:70) “one of the basic factors affecting oversight or its effectiveness is a strong party based system”. The relationship between the ruling majority party and the executive government has an impact on the oversight process and even more so in a Parliamentary system of government than any form of democratic government because in such a system, the fate of the two sides is intertwined . The reason is that one stands and falls with the other (Ahmed, 2011:70). MPs are always reluctant to demand that the members of the executive from their own political party to account, as that can be seen as non-comradeship and has the potential of being career-limiting. The use of party list to fill seats in Parliament means that MPs of the majority party are often in a position where they must exercise oversight over senior members of their own party, the same members who may be able to influence the composition of the list during the following elections (Parliament, 2009:37). The MPs of the majority party can also be seen as turning against their own party policies being implemented by the executive.

The above discussion by Ahmed (2011:70) on oversight indicates that for effective oversight to be realised, Parliament needs to have technical expertise to conduct oversight, which may include such skills as understanding economic planning and be able to analyse financial policies and processes. Once oversight has taken place, Parliament should be able to process that information and act on it regardless of political party influence and dominance. It is then clear that effective oversight leads to a proper functioning democracy. This is as a result of the oversight activities can lead to an improvement in the quality of policies and programmes introduced by the executive. Oversight leads to the executive policies and programmes gaining greater legitimacy once ratified by Parliament. Legitimacy is achieved because of the participation of opposition parties who bring a greater consideration of general public interest to the process of oversight than when policy and programme consideration is conducted by the same political party with the same outlook (Izah, 2013:5).

The success of the oversight role by Parliament, and to some degree its effectiveness, can only be realised through the constitutional provisions for oversight. Two other major contributors to oversight success and effectiveness are MPs personal integrity and competence. MPs that lack integrity and competence build a Parliament that can be classified as a rubber stamp Parliament in that it simply endorses decisions made elsewhere in the political arena. The danger of a rubber stamp legislature is that it is non-transformative, as such a legislature finds it difficult, if not impossible, to change the executive policy proposals.

Parliament should be administratively efficient and technically competent as an institution. It should also be able to provide the necessary information to MPs in order for the member to conduct oversight in a particular area of governance. This view is supported by Godi (2012:1) “The gradual erosion of legislature’s capacity to exercise control over the executive has been ascribed to the circumvention of Parliament by the executive. However, the internal capacity constraints faced by many legislatures have often been neglected. Minimal performance by legislatures in terms of policy analysis and review, budget control and initiation and amendment of legislation as well as lack of consultation between Parliamentarians and their constituencies have less to do with the political environment than the internal capacity of these institutions”. It is then important that Parliament should be strengthened by providing the necessary capacity and frameworks to provide effective oversight over the executive.

2.2.3 Accountability

Definition

Lastra and Shams (2000:3) define accountability as an obligation owed by one person (the accountable) to another (the accountee) according to which the

former must give account of, explain and justify his actions or decisions against criteria of some kind, and take responsibility for any fault or damage.

Schedler (1999:17) supports this view by Lastra and Shams (2000:3) and define accountability as follows: “A is accountable to B when A is obliged to inform B about A’s (past or future) actions and decisions, to justify them, and to suffer punishment in the case of eventual misconduct”.

Schedler (1999:17) definition foregrounds three key aspects of political accountability: answerability, justification, and enforcement (Schedler, 1999:14-15). This definition indicates that the accountable is obliged to provide answers in the sense that information must be provided about decisions taken and how they were arrived at. According to Butler (2011:2), accountability also requires justification. This justification is realised when Parliament demand that Ministers and officials account to Parliament by giving reasons for their actions. He (Butler, 2011:2) further indicates that accountability implies the subordination of the policy process to reason and the creation of a culture of justification among policymakers. It can then be said that accountability entails enforcement which may involve the administering of sanctions.

In both Lastra and Shams (2000:3) and Schedler (1999:17) definition, it becomes obvious that accountability ensures that decisions and actions are taken by those responsible for public services in order to ensure that the stated and expected objectives are achieved in order to better the lives of ordinary citizens. Oversight furthermore entails the scrutiny and examination of the conduct of individuals in institutions of authority by means of personal accountability. Institutional accountability is employed in order for organizations to account for their corporate behaviour or poor performance.

According to Bovens (2010:948) “accountability and accountable have strong positive connotations; they hold the promise of fair and equitable governance”. This is evident in Nyathela and Makhado (2012:4) when they indicate that “the purpose and functions of accountability are:

- To enhance the integrity of public governance in order to safeguard government against corruption, nepotism, abuse of power and other forms of inappropriate behaviour.
- As an institutional arrangement, to effect democratic control.
- To improve performance which foster institutional learning and service delivery.
- To enable the public to judge the performance of the government by the government giving account in public”.

Even though the power and authority to constantly and judiciously check how and why the authorities in government handle national resources, “Legislatures in the Westminster tradition have proved weak at ensuring that governments remain accountable between elections” Nijzink (2002:87).

Nijzink (2002:87) blames this weakness on the majority of the legislature tendency to interpret their role as simply sustaining government and supporting its initiatives. The end product of this weakness is having MPs who are not able to individually hold the government to strictly account for their plans and actions for fear of losing their positions on the party list and facing disciplinary action if they support a different position from that of the party in the legislature.

For accountability to take place, institutions tasked with oversight should be able to function properly and perform their tasks without fear or favour. The key elements, namely answerability and enforcement, emerge from the definitions of accountability above, even though accountability is an anamorphous concept. In the context of South Africa, for example, answerability is the obligation on the side of the executive/government (i.e. President/Ministers), public entities (Eskom and the SABC), and officials in the public sector (e.g. Director-General) to provide information to institutions responsible for oversight (Parliament) in an attempt to justify how and why certain decisions were taken or not taken.

Types of accountability

According to Stapenhurst and O'Brien (2007:1), the types of accountability are horizontal accountability and vertical accountability. Stapenhurst and O'Brien (2007:1) indicate that "horizontal accountability is the capacity of state institutions to check abuses by other public agencies and branches of government, or the requirement for agencies to report sideways". Horizontal accountability is the accountability type held by accountability institutions, such as Parliament, with autonomous powers to question and "punish" improper behaviour and action from elected and appointed public officials.

Vertical accountability in turn is the means through which citizens, mass media, and civil society seek to enforce standards of good performance on officials (Stapenhurst and O'Brien, 2007:2). Civil society and mass media usually seek the attention and support of the politicians in Parliament when they notice inappropriate behaviour and or action by government officials. They understand that since they do not have authority over the public officials, they can lobby constitutionally mandated institutions to exercise oversight and thus expect the government and its agencies to account or face sanctioning where it's appropriate.

The focus of this study is mainly on political accountability that was exerted by Parliament in the fourth Parliament, as mandated by the Constitution of the Republic of South Africa. Political accountability by the executive to Parliament as a political institution is different to legal accountability by the executive, which is exerted by the judiciary by holding the executive legally accountable. Secondary autonomous institutions of accountability such as the Public Protector, Human Rights Commission and Auditor-General are some of institutions provided by the South African Constitution designed to be independent of the executive in their reporting to Parliament to ensure that the government accounts for their actions and/or lack of action and thus promote the notion of responsible government.

Parliament is mandated by the Constitution to act as an agent of accountability through its oversight mechanisms. It becomes an agent in that the electorate (the principal) elects Legislators to enact laws and oversee government actions

on their behalf. The electorate hold the legislators (Parliament) to account at election time. Where dissatisfied, voters can recall their elected political party and vote for an alternative (Stapenhurst and O'Brien, 2007:2). Parliament should be the key institution of accountability - not only in its own right, but also as the institution to which many autonomous accountability institutions report (Chapter 9 Institutions). Parliament is then the main vehicle through which political accountability is exercised.

2.3 Theoretical background and rationale for oversight and accountability

The definitions of concepts indicate that oversight and accountability are closely linked to democracy and more specifically to parliamentary democracy, which was discussed on subsection 2.2.1. The link can be drawn from the fact that the public representatives in Parliament are empowered to speak or vote, reflecting the views of their constituencies. It is then through this empowerment that they draw their power to conduct oversight and are thus able hold the executive accountable (supported and guided by the Constitution).

Schacter (2000:1) concur with the view stated above by indicating that “society concedes wide powers to the executive authorities in the government of the day: to tax, to spend and make and enforce policies and laws for which in return they expect accountability”.

2.3.1 Theoretical foundation to oversight and accountability

To discuss the theoretical background of oversight and accountability fully, it is inevitable that the parentage of democracy and the role of oversight and accountability in the early democratic societies should be traced. According to Rejai (as cited in Clapper, 1996:52) the word “democracy” originally referred to the type of government in which power to rule was vested in the people and it refers to the governmental system of the city states of Athens during the time of Pericles. According to Ehrenberg (1950:515) in turn states that the Greeks were the first political people in the history of humankind, for they were the first

to create states purely as communities of citizens in which the administration and the making of policy were the right and the duty of these citizens.

The Athenian democracy can be considered as an inspiration for modern democratic systems. The study looks at the Athenian democratic Constitution in the fifth and fourth centuries BCE, with the hope of giving the theoretical foundation of oversight and accountability with the aim of facilitating a comparison of that democratic system with the democratic system established by the South African Constitution on oversight and accountability.

According to Rothchild (2007:4) “the Athenian democracy is the world’s oldest well documented democratic polity, and as such has served as an inspiration, and cautionary tale, for designers of all subsequent democracies”. The focus is principally on what is usually called the classical period in Athenian history. Rothchild (2007:4) further states that “this period runs from 490 BCE, the year of the first Persian invasion of Greece, until 323 BCE, when Alexander the Great died. The Athenian map below shows the Athenian empire in 431BCE.



Source: Rothchild, 2007:6)

Figure 2.1: The Athenian empire in 431BCE

The most striking features of the Athenian democracy were that most public officials were selected by lot, most could serve a single one-year term or two such terms non-consecutively Rothchild (2007:13). Final legislative authority

lay with a body consisting of the entire citizen population, rather than a representative body Rothchild (2007:13). It can then be said that the Athenian democracy, in its structure, institutions and procedures, was radically different from our own system of representative democracy.

When comparing the South African democracy and that of the Athenian democracy, it becomes evident that both systems intended to vest the ultimate power in the hands of the citizens, to hinder overreaching by public officials and subversion of the democracy, to implement the rule of law, and to create a stable constitutional structure. According to Rothchild (2007:33) “a perennial difficulty for democratic constitutions is the need to assign public officials sufficient power to accomplish the objectives of government, while in the same time preventing them from exceeding their assigned powers in a way that would detrimentally affect the liberties of the people”.

The South African Constitution employs structural devices designed to prevent overreaching by the executive and these structural devices including oversight and accountability, protection of individual rights by the bills of rights and separation of powers. The separation of powers principle refers to democratic structural systems of governance in which checks and balances result in the imposition of restraints by one arm of state upon another. In South Africa, the separation of powers doctrine originates from constitutional principle VI of the Constitution of 1993 (also referred to as the interim Constitution), which provided that there shall be separation of powers between the legislature, executive and judiciary with appropriate checks and balances to ensure accountability, responsiveness and openness (Constitution, 1993). The final Constitution adopted in 1996 had to give effect to this principle.

The Constitution confers on the executive the power to prepare and initiate legislation while Parliament is mandated to legislate, including initiating and preparing legislation. Similarly, the Constitution empowers the courts to develop the common law and customary laws, thus implying law making by the courts that are supposed only to interpret and apply the law (Seedat and Naidoo,

2015). Parliament contributes to policy evolution which in terms of the Constitution is developed and implemented by the executive.

While the Constitution assigns specific powers and functions to the three arms of state, it also provides several checks and balances or accountability measures to curtail the exercise of that power. Although the Constitution does not explicitly refer to the doctrine of separation of powers or checks and balances, these are nevertheless built into it from the interim Constitution. The separation of powers doctrine is an unexpressed provision that is “implied” in or “implicit” to the Constitution.

In line with this, Rothchild (2007:33) states that “the Athenians, having experienced the tyranny of the Peisistratids in the late sixth century, and having seen their democracy twice subverted (albeit briefly) at the end of the fifth century, were likewise concerned to constrain the power of public officials”.

In order to entrench democracy the Athenian democracy put the following oversight and accountability measures.

Epikheirotonia

According to Rothchild (2007:35), at the first (Principal) meeting of the assembly each prytany, there was a vote on whether public officials were performing their duties well, in a procedure called *epikheirotonia* (“voting by a show of hands”). If the vote went against an official, he was provisionally deposed from office, and he would be tried before a jury court. If convicted, he would be removed from position, and might be fined, as was Pericles in 430 BCE. If acquitted, the official would return to his office.

Euthyna

Euthyna was an examination of a public official that took place after he finished his term of office. It was applicable to the council members but not to jurors. According to Rothchild (2007:35), the examination consisted of two stages. First, there was a review of the official’s handling of public money to uncover

crimes such as embezzlement, accepting bribes, or causing loss to the demos through neglect. He (Rothchild, 2007:35) further indicates that the examination was conducted by ten *logistai*, who were selected from the citizens by lot.

The second stage of *euthyna* was aimed at uncovering any sort of misconduct, such as neglect of duty or misuse of power. It was conducted by ten *euthynoi*, who were members of the Council, one chosen by lot from each of the ten tribes. If the *euthynoi* thought any charge well founded, they passed it along to the appropriate magistrate for trial (Rothchild, 2007:36).

Apophasis

In the mid-fourth century, the *apophasis* procedure was introduced to allow the Areopagos to investigate possible offenses Rothchild (2007:36). The Assembly could refer a matter to the Areopagos for investigation, or the Areopagos could launch an investigation on its own initiative. The Areopagos made a report (apophasis) of its findings to the assembly, which would decide whether a person should be prosecuted. The most well-known example of the use of this procedure was in the Harpalos affair, when it led to the trial and conviction of the orator Demosthenes for accepting a bribe from the treasurer of Alexander the great.

In support of the principles and systems that act as a foundation for democracy, as those in the Athenian democracy, Parry and Moyser (1994:44-46) differentiate between 'realist' theories of democracy that emphasise representation, responsible leadership, and elite responsiveness, as the key elements of democracy, and theories that see direct participation as the *sine qua non* of democratic practices.

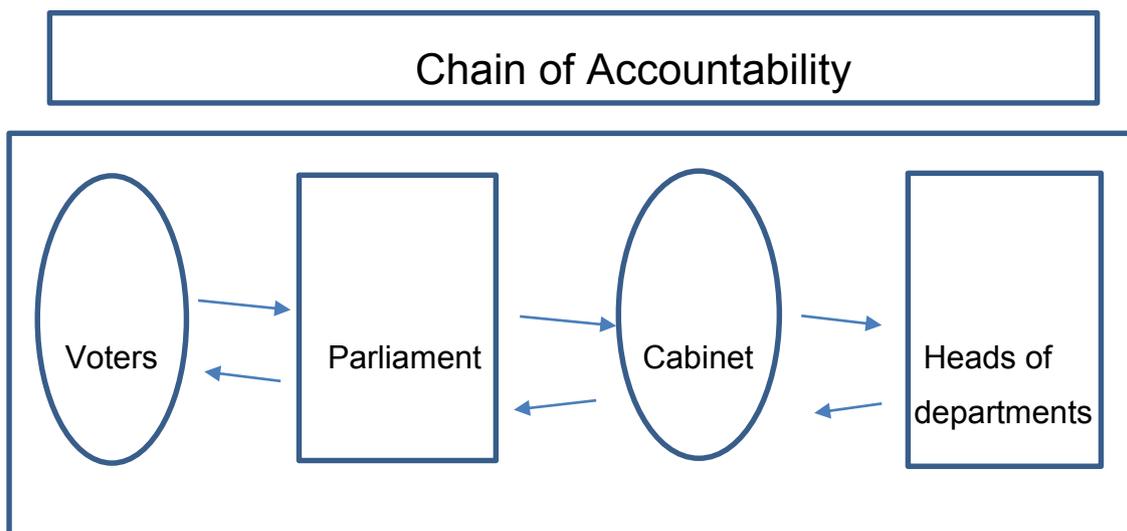
To validate Parry and Moyser (1994:44-46) theories of democracy as they define and measure democracy, "The first set of theories point out that the degree of direct democracy that was exercised by citizens in the relative small assemblies of ancient Athens is no longer possible in large, complex societies". According to Nel and Van Wyk, 2003:55 this direct democracy is exercised "to

the extent that 'realist school' of thinking about democracy does recognise public participation as a feature of democracy, but reduce it to only one manifestation, namely voting". Furthermore, elite models of democracy hold that "a vote into office is essentially a political blank cheque for elected representatives to proceed as they see fit" (Ballard, 2007:17).

The second set of theories is based on the notion that democracy in its original sense of 'rule by the people' is hardly achieved without a whole range of participatory activities through which the public not only vote for the sake of appointing and monitoring representatives, but they become political citizens. (Nel and Van Wyk, 2003:56). According to Pitkin as cited in Young (2000:128) "In contrast to the elite models, elected representatives are not seen simply as trustees who can proceed as they see fit, but also as delegates who have mandates from the constituencies to which they are accountable".

According to Barkan et al (2003:1) a legislature is effective only if it takes on a watchdog role over the executive. McGee (2002:9) indicates that being held accountable for the exercise of power is a "requirement for democracy". The scrutiny of executive government and holding it to account for its actions is the key function of a legislature, according to Brazier, Flinders & McHugh (2005:33). It is then evident that the authors of the South African Constitution of 1996 were in agreement with the above mentioned authors, as they included constitutional provisions that demand legislatures to put in place mechanisms in place that will ensure that the executive and its organs of state are accountable to the legislatures.

Murray and Nijzink (2002:89) illustrate that the accountability responsibility of the executive stipulated in the South African constitutional framework by an "accountability chain" which is based on the constitutional principle that the Parliament and legislatures are responsible for executive oversight. It further demands that members of the executive also ensure that those accountable to them adhere to accountability, e.g. Director Generals of departments or the boards of the different parastatals or public entities.



Source: Murray & Nijzink, 2002:89

Figure: 2.2: Chain of Accountability

According to Hedger and Blick (2008:2) the accountability obligation originates from “the practical need to delegate certain tasks to others so as to distribute delivery of large and complex workloads”.

2.3.2 Rationale for oversight and accountability

Oversight and accountability are integral parts of democracy. According to Creighton (2005:17) “democracy is intended precisely to give the people power over choices about the ultimate aims and goals of government action”.

According to Gildenhuis, Fox and Wissink (1991:124) “a situation that encourages and/or allows participation in general elections only is, therefore, not entirely democratic. In fact public participation in decision-making is an imperative for a democratic government”. The public in any democracy should be able to participate in their own government by asking robust questions about the executive’s actions through their representatives in the legislature.

In Parliament on the 26 March 1999, the former President of the Republic of South Africa, Nelson Mandela indicated that

“It is in the legislatures that the instruments have been fashioned to create a better life for all. It is here that oversight of government has been exercised. It is here that our society in all its formation has had an opportunity to influence policy and its implementation”. (Parliament, 2009)

Oversight and accountability are terms that have emerged as universal attributes of good governance (Botes, 2011:19). According to Lastra and Shams (2000:6) “accountability can either be exercised before/during the process of taking decisions/action, or after the decision/action has been taken. It is with reference to this fact, the fact of concluding a decision or action, that we define accountability as either *a priori* (ex-ante) or *a posteriori* (ex -post)”.

Whether accountability is *priori* (ex-ante) or *a posteriori* (ex-post), certain objectives in overseeing the executive are the bases of ensuring Legislatures conduct oversight. According to Madue (2012:435) legislatures conduct oversight in order to:

- Ensure transparency and openness of executive activities. Legislatures shed light on the operations of government by providing a public arena in which the policies and actions of government are debated, scrutinised, and subjected to public opinion.
- Hold the executive branch accountable. Legislative oversight scrutinises whether the government’s policies have been implemented and whether they are having the desired impact.
- Provide financial accountability. Legislatures approve and scrutinise government spending by highlighting wasteful expenditure within publicly-funded services. Their aim is to improve the economy, efficiency and effectiveness of government expenditure.
- Uphold the rule of law. Legislatures should protect the rights of citizens by monitoring policies and examining potential abuses of power, arbitrary behaviour, and illegal or unconstitutional conduct by government.

Even though the objectives are clear, Madue (2012:435) indicate that “there are numerous limitations in exercising effective oversight”. The limitations and complexities of exercising oversight include, among others, the following:

- Parliamentarians lack the technical expertise to be able to participate in economic planning and analysis, and therefore cannot be expected to be real players in the financial policy process.
- Parliaments are too subject to political party dominance that prevents the exercise of significant oversight responsibilities on the executive.

Johnson and Nakamura (1999) as cited in Madue (2012:435) argue that “while most legislatures have some formal oversight powers, effective oversight is difficult to exercise because it requires information about executive branch activities, the legislative capacity to process that information, the legislative will to act, and the power to back up demands for improvement / access / responsiveness. Oversight, even more than law-making, puts the legislature into an adversarial relationship with at least some portion of the executive branch”.

The mechanisms for oversight that legislatures utilise include questions to the Executive, public accounts Committees, interpellations, Auditor-General, subpoenas and other court type powers e.g. the ombudsman and investigatory and departmental Committees (Pelizzo & Stapenhurst, 2004). The mechanisms of Parliamentary oversight are discussed in detail in Chapter 3.

2.4 The state of oversight and accountability in the selected international Parliaments

In evaluating oversight and accountability by the fourth Parliament of the Republic of South Africa, an international comparison became essential in order to understand and bring an international context on oversight and accountability. This comparison enables the study to evaluate how the fourth

Parliament measures and compares against those international legislatures both in developing and developed democracies. The choice of Parliaments was based on a desire to sample a number of Parliament from developed and developing countries across the globe, some unicameral with one Parliamentary assembly and others bicameral with two houses of Parliament.

2.4.1 Governance and Parliamentary accountability in Ireland

According to MacCarthaigh (2012:1) “the National Parliament of Ireland is called ‘the Oireachtas’, and it consists of the ‘the President and two Houses [:] a House of Representatives called Dáil Éireann and a Senate called Seanad Éireann’. Martin (2010:1) explains that “the political system of the Republic of Ireland functions as a representative democracy and Irish government is part of this chain of delegation. Citizens vote to elect representatives to Dáil Éireann. Dáil deputies then select the Taoiseach who in turn selects members of the cabinet”.

Article 28.4.1 of the Constitution of Ireland according to MacCarthaigh (2012:2), states that ‘The Government shall be responsible to Dáil Éireann’. This can be interpreted as indicating that the members of Dáil Éireann have a duty to hold the government to account. Gallagher (2010:2) indicates that “by common consent, the Irish Parliament is not among the world’s strongest in its capacity to control or even constrain the executive”. Gallagher (2010:2) can only be understood as saying that the government clearly dominates the Irish Parliament, He (Gallagher, 2010:2) is further supported by Martin (2010:2) who says most popular accounts of Irish politics suggest that monitoring of the Irish government is weak and that the principals in Irish politics are often considered incapable of monitoring the government, with executive-legislative relations heavily imbalanced in favour of the executive (Martin 2010:2).

In explain this relation between the executive and Parliament, Martin (2010:11) indicates that “clear evidence of the fusion of executive and legislative organisation in Ireland is the very high levels of party discipline. It is virtually

unheard of for members of the Oireachtas to vote against their party leadership". It can then be said that the results of such party unity will be a government that is not accountable to Parliament and that governs as it wishes because of the protection that it enjoys within the Parliamentary chamber.

2.4.2 The Botswana Parliament: The President and executive powers

The Constitution of Botswana has failed to put a clear-cut divide between the branches of government. It therefore lacks the notion of separation of powers. This has incapacitated Parliament in its efforts at keeping the executive arm accountable (Bodilenyane 2012:193).

According to Bodilenyane (2012:194) "the role of Parliament is unfeasible because there are developments where the Constitution allows the President to act in his own deliberate judgement without having to consult anyone, which is a potential assault to democracy". This situation is not conducive for the development of democracy. A direct engagement between the Presidency and Parliament is always expected when addressing issues that affect the citizenry. This is not occurring in the Republic of Botswana, as the "executive Presidency has made the Parliament a toothless dog that cannot counterbalance the powers of the President" (Bodilenyane, 2012:194).

The difficulty for Parliament to oversee the executive and ensure that it accounts to Parliament for its actions and decisions is further made difficult by the power of patronage wielded by the President on backbench MP's whom he can appoint to cabinet. Bodilenyane (2012:196) when citing Nsereko (2004) indicates that this is because of the situation in Botswana where one party dominates the legislature.

This situation is very alarming in a democratic state and thus it necessitates that even in countries such as South Africa, with a dominating majority rule, the oversight and accountability role is constantly checked to determine if it is exercised by the legislature in order to make sure that it does not lose its

constitutional obligation against the executive. It is evident that the Constitution of Botswana is not drafted to deeply promote democracy and create a balance of power between the Presidency and the legislature, and to ensure the Presidency and his executive cabinet are kept in check by the people through the legislature as the representative body of the people.

2.4.3 Oversight and Accountability function of the United Kingdom Parliament

According to Kwan (2001:2) the United Kingdom (UK) does not have a Constitution set out in any single document but instead, its Constitution is made up of statute law, common law and conventions. The three elements which makes up the Parliament of the UK are the, the House of Commons, House of Lords, and the Sovereign (Monarchy). The House of Commons is made up of Members of Parliament each representing an individual constituency. The main oversight functions of House of Commons includes the scrutiny of the executive policy, debate on major issues of the day and administration, including its proposals for expenditure through budget approvals (Kwan 2001:4). The House of Commons scrutinises the work of the executive through such mechanisms that includes questioning of ministers in the Parliament chamber and through the select committee system.

The House of Commons have power to force the executive to resign or seek a dissolution following a defeat on a confidence motion. The House of Lords consists of Lords spiritual and Lords temporal that are not elected to be Members of the House of Lords. According to Kwan (2001:5) “the House of the Lords plays an important part in revising legislation and keeping a check on government by scrutinising its activities”.

The role of the Monarchy is mainly related to executive powers which do not depend on Parliament and is thus not relevant for the purpose of this research as they lack powers to scrutinise and oversee the executive. The powers vested

in the Monarchy are mainly prerogative powers e.g. power to make treaties, declare war and award honours.

According to Kwan (2001:7) one of the major constitutional conventions in the UK is that ministers are accountable to Parliament and through Parliament to the public. Ministerial responsibility in the UK refers both to minister's collective responsibility for government policy and ministers individual responsibility for their own departments (Kwan 2001:7). Interestingly According to Parliament (2007:8) "in terms of sections 92(2) and 133(2) of the Constitution, members of cabinet and members of the executive council are collectively and individually accountable to Parliament and Provincial Legislatures respectively".

In order to ensure effective oversight of the executive according to May (2004:73) both the House of Commons and the House of Lords passed resolutions that were later formally incorporated into the ministerial code in relation to Parliament: ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments; it is of paramount importance that ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament are expected to offer their resignation to the Prime Minister. The ministerial code further demands that ministers should require civil servants who give evidence before parliamentary committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information, in accordance with the duties and responsibilities of civil servants as set out in the civil service code.

May (2004:74) indicates that "the resolutions were presented as clarifying the roles of ministers in relation to Parliament and not intended to affect or derogate from the duties ministers owe to Parliament in their capacity as Members of one of the Houses: and imposing on Ministers the additional duty to offer their resignation to the Prime Minister will not affect the right of either House to proceed against them in a case of alleged contempt, as it might proceed against any other Member".

The House of Parliament in the UK has indeed put measures to ensure that the executive accounts to Parliament. It is important that even though mechanisms are put in place to ensure accountability by the executive, MPs be clear about their duty to hold the executive to account. This understanding of the duty to hold the executive accountable is based on the belief that changes in the attitudes and behaviour of politicians themselves are as important as changes in the working of Parliament (Hansard Society 2001:xi) .

2.4.4 Legislative relations in Poland

A new Polish Constitution was eventually adopted by referendum in 1997. The new Constitution further clarified the powers of the President and the legislature. Some Presidential powers were weakened (Osiatynski 1997:8). The new Constitution introduced a “rationalised” parliamentary-cabinet system in Poland. It is the first Constitution of the Third Republic of Poland. The act defined the position of the Sejm and the Senate within the parliamentary system without using the term “parliament”. The Polish Constitution adopted the doctrine of separation of powers, which provided for a balance between the Legislative and Executive powers (Poznaj Sejm 2011).

According to the Poznaj Sejm (2011) “another basic function of the Sejm, consisting in the Sejm’s ability to establish independently the actual state of affairs in matters concerning the council of Ministers and the administration subordinated to the Sejm, as well as basic areas of social life, and to compare it with what is required by law”.

As part of its powers, the Poznaj Sejm (2011) may demand information on a given issue from government member in written or oral form at a sitting of the Sejm or a Committee. Measures can be taken such as dismissal of an individual from a state post, e.g. a Minister in consequence of a vote of no-confidence.

The Poznaj Sejm (2011) indicates that “the Sejm as part of exercising its oversight and accountability each year the Sejm debates on the performance of the budget act by the government, relying on an opinion by the Supreme Chamber of Control, and as a result of its assessment the government is or is not granted discharge for its activities”. The Constitution has enhanced democracy by enriching the Parliamentary system to make sure that the executive accounts and that proper oversight is conducted by the Sejm and should be adopted by post-communist states in the endeavour to adopt viable democratic arrangements.

2.4.5 Parliament and executive relations in Malawi

After three decades of dictatorial one-party rule, Malawi witnessed a dramatic transition to a multiparty political system during the 1993-1994 period. This was followed by the adoption of a new National Constitution in 1995 (Malawi Parliament 2010:7). It is further reported that “Parliament is therefore accountable to the people when performing the powers and responsibilities entrusted by the Constitution and any Act of Parliament. All legislative powers of the Republic are vested in Parliament. According to section 48 91) of the Constitution, Parliament is composed of the President as Head of State and the NA” (Malawi (2010:7).

Patel and Tostensen (2006:4) amplify the importance of vesting the legislative powers to Parliament when they argue that “the Constitutional powers conferred upon Parliament define the framework within which it operates. They largely determine and delimit the room of manoeuvre that Parliamentarians have when facing the executive. As opposed to Parliamentary systems, in the Presidential systems the Parliamentary powers do not include influencing cabinet formation, censure or dismissal of ministers, or ousting the cabinet by means of a vote of no confidence”. The Constitution of the Republic of Malawi fails to include adequate horizontal accountability mechanisms for checking the government (Patel and Tostensen 2006:6). Horizontal mechanisms refer to

autonomous institutional mechanisms put in place to check the discharge of responsibilities by officials by calling into question and punishing improper conduct (Patel and Tostensen 2006:4). It can be concluded that the Presidential nature of the political regime in Malawi makes it difficult, if not impossible, for the Parliament to effectively oversee the executive and ensure accountability by the executive cabinet and the President.

2.4.6 Legislative and executive relations in Zambia

The Zambian Parliament is one of the oldest continuously functioning legislatures in the Southern African Sub-region. According to the Parliament of Zambia (2012:6), citing the Constitution of Zambia article 62, Parliament is a composite body consisting of the President and NA. The Parliament of Zambia (2012:7) indicates that under a Parliamentary democracy, Parliament oversees Government administration and subjects its activities to detailed scrutiny on behalf of the electorate. To carry out this important function, Parliament has established Parliamentary committees that conduct surveillance on defined areas of government administration.

A Parliamentary committee system ensures that the executive is accountable to Parliament. Parliamentary committees have been in existence in Zambia as far back as the pre-independence era (Zambia Parliament 2012:7). The Zambian Parliament as indicated is familiar and experienced at utilising the committee system and this has led to an effective use of committees and this claim is confirmed by the statement that “The committees have undergone growth and procedural changes over the years due to a number of factors such as increased government responsibilities and activities. This system brings the legislature face to face with bureaucrats, thus increasing the information available to Parliament on governmental problems” (Zambia Parliament 2012:7). Also in South Africa Parliament designate committees to perform the oversight mandate and report back to their Houses on matters referred to them, the South African Parliament will be discussed and evaluated under subsection 3.3.3.3 in chapter three. In Zambia any citizen or group may petition the Parliament to action through the National Assembly on any matter of public

interest, prove that it does not fall within the jurisdiction of a court of inquiry, tribunal, or commission of inquiry.

The Zambian Parliament has undergone significant reforms since the re-introduction of multiparty democracy in 1990 and the reforms implemented since 2002 under the Parliamentary Reform Programme have seen the institution become much more effective in the level of performance of the different functional areas with respect to the budget process (Zambia Parliament 2012:26).

2.4.7 Democratic accountability in Latin America

The Latin American legislatures being constitutionally compared for legislative oversight are those of Argentina, Bolivia, Brazil, Colombia, Peru and Venezuela. According to Lemos (2010:13) “all countries have the summoning powers of authorities, some with a very interesting sanctioning mechanism, similar to the recall in the parliamentary system—once the presentation is not considered satisfactory, the cabinet member or authority can be dismissed”. Oversight mechanisms are explicitly mentioned in both the Constitution of Argentine and the internal statutes of the House and the Senate (Lemos 2010:15). The houses have constitutional right to ask for oral or written reports and explanations of the executive branch (Lemos 2010:16).

As for the Bolivia state of oversight and accountability, according to Lemons (2010:18) “the 2009 Constitution empowers the Plurinational Legislative Assembly (PLA) to control and oversee all state agencies and public institutions, public enterprises, and any entity that receives resources from the state. It can promote investigations through its committee system and can also demand questions or summon ministers. Once the minister is summoned and does not come to the testimony, he can be censored by two thirds of the body and, in that case, has to be dismissed by the President”. The PLA is the only chamber with legislative oversight duties in the 2009 Constitution. Neither the chamber, nor the Senate has a legislative oversight prerogative whatsoever

mentioned, as far as investigation control, interpellation, written or oral questions are concerned (Lemos 2010:19).

Regarding the case of Brazil, Lemos (2010:21) indicates that “the 1988 Constitution is the landmark of legislative oversight in Brazil. Indeed, it specifies that the National Congress will have the exclusive prerogative of overseeing the executive”. The 1988 Constitution lays out many oversight procedures and instruments. The most important for addressing informational asymmetry and for the investigation of wrongdoings are the resolutions of enquires, (the equivalent to written questions), compulsory testimony by public officials (the summoning of authorities), cabinet ministers and top rank officials, which can take place in either the committee or at the floor; and public hearings, which can be called by legislators, civil society organizations, unions, and associations (Lemos 2010:22). The impeachment of the executive in ensuring accountability is supported by the Constitution of Brazil, “The Constitutional procedures for oversight in Brazil also include provisions for impeachment of the president, vice-president and ministers (Lemos 2010:22).

In the case of Columbia, the Columbian Constitution was approved in 1991 (Lemos 2010:24). The Constitution allows both Chambers to demand reports from the government and to organise private sessions for the cabinet members’ oral questions. Lemos (2010:25) indicates that “the same article (Article 135) sets the summoning of authorities and its procedure, which introduces a parliamentary-based concept: the non-compliance with the interpellation will allow Congress to propose a censor motion that can lead to the authority’s dismissal-the same as Bolivia”.

The road to a democratic order in Peru was came after an aftermath of self-coup and indicated by Lemos (2010:26) when citing Cameron (1996) indicates that the Peruvian Constitution came in the aftermath of a self-coup in Peru: in April 1992, the then President Fujimori dissolved Congress, suspended temporarily the 1979 Constitution and ruled by decree until November 1992, when a new “democratic elected Congress” drafted the new Constitution. It was

ratified by a popular referendum in October 1993, and reformed in 2004 and 2005.

On the oversight front, the 1993 Constitution grants Congress the power to inquiry written information from ministers and a number of executive authorities at the three government levels (national, regional and local). According to Lemos (2010:26) "Congress also has question time-every Member can make one question to the government once a month and can summon authorities, especially cabinet members, to testimony before Congress by approving a resolution with one fourth of the total votes".

In the case of Venezuelan, the Constitution gives Congress the power to oversee and control the national public administration. According to Lemos (2010:29) the "classic" oversight tools are also set in the Constitution: the questions, interpellations or summoning, and investigations. The 1999 Venezuelan Constitution does not set procedure for impeachment of the President and other authorities. It just establishes that the Supreme Court of Justice will judge the President and other authorities in the case of abuses. It is different from the United States of America's model as applied elsewhere in all other countries, except Bolivia, in which generally the lower chamber accuses and the upper chamber judges the President and vice-President (Lemos 2010:30)

Lemos (2010:30) further state that "the Assembly statute empowers all the permanent committees to conduct oversight of the administration in their jurisdiction, and to initiate investigations, but also sets up one committee with exclusive oversight rights, which is responsible for overseeing the use of public resources in all sectors and government levels". It easy to notice the similarities in the oversight design of the six countries compared referred to above. Even though these countries often find themselves under manipulative Presidents or in the process of moving from dictatorial rule towards liberal democracy, often not in a straightforward manner, the oversight design indicates that even though the Presidents might be powerful, some legislative capacity to oversee the executive in order to ensure accountability does exists. Even though capacity

to oversee the executive and ensure accountability exists, the following question arises: How effective are the oversight mechanisms that are put in place? The problem is that sometimes the capacity and legislative mechanisms may be in place, but that does not mean they are implemented effectively. This is supported by Lemos (2010:33) when citing Palanza (2005) when he indicates that, although there might be reasonable level of potential oversight, the few empirical works on effectiveness of oversight in the region suggest flaws, such as lack of implementation of rights, poor records of activities, and the use of oversight mechanisms, as mere formalities

2.4.8 Parliament cameral structure on oversight and accountability

A Parliament can be a unicameral legislature, which refers to countries with one Chamber of Parliament or bicameral legislatures with two Chambers of Parliament. South Africa can be classified as a bicameral Parliament, consisting of the NA and NCOP. Variation exists among the selected international legislatures with respect to the structure of their legislatures. Some Countries like Botswana, Malawi, Zambia, Peru, Venezuela are typical unicameral. One of the observations is that a number of unicameral legislatures have weak to non-existent oversight and accountability methods and tools. For example, in Botswana, the Constitution allows the President to act in his own deliberate judgement. Malawian Parliament is composed of the President as the Head of state and the NA. The Presidential nature of Malawi political regime makes it difficult if not impossible for Parliamentary to effectively oversee the executive and ensure accountability by the executive and the President.

However, some of the unicameral legislatures have strong or noticeable oversight functions mandated by their Constitutions. In this way, the Zambian Parliamentary democracy can oversee the executive. The bicameral legislatures, such as UK, Poland, Argentina, Bolivia, Brazil and Colombia, in turn usually have strong oversight functions; except Ireland, which even with two houses has weak monitoring of government due to strong partisanship and fear of party discipline. Brazil's national congress again has the prerogative of overseeing the executive, which may include impeachment of the President.

In the case of South African, both houses are expected by the Constitution to ensure accountability and each play a different role in ensuring that the executive accounts to Parliament. It is important that coordination takes place between the two houses, which serves as a method of strengthening their oversight function. This function is further strengthened by also forming a Joint committee on oversight and government assurance. From the literature on the comparative study, it becomes evident that transparency is necessary but not sufficient for accountability, as is the importance of having a political culture to conduct oversight whether in unicameral or bicameral Parliament is important.

2.5 Summary and deductions

Based on the literature review, it is evident that oversight and accountability are cornerstones of democracy. The theoretical context and rationale for oversight and accountability that was discussed was followed by an international comparison in order to give a clear perspective on how oversight and accountability, lead to an enhancement of democracy and how weak implementation of oversight and accountability fails democracy. The ability of Parliament to exert its constitutional mandate to oversee the executive is an important feature of any if not all, democratic legislatures. It becomes clear that putting in place procedures and practices for Parliamentary oversight is not enough but also a culture and appetite to ensure that the executive is accountable to Parliament should exist and be implemented. In all, measures to maximize the value of oversight and accountability should be daily explored. The doctrine of separation of powers in South Africa is also discussed in order to give a clear understanding on how another arm of state is empowered to ensure accountability. The international Parliaments were also studied according to their structure i.e. whether they are unicameral or bicameral legislatures and the literature strongly indicates that the structure of formation of a countries Parliament has less influence on how strong it ensures oversight and thus accountability by the executive. The literature tends to indicate that the more a Parliament develops priorities for oversight and has a strong focus

on overseeing the executive, the greater the accountability from the executive. Parliaments with strong partisanship tend to be weak on emphasising and ensuring that executive accountability is prioritised.

The UK to ensure executive accountability even passed a resolution on minister accountability to Parliament that the government formally incorporated to the ministerial code. The international comparison highlights that for effective oversight and accountability to be realised, the Constitution of a country should be able to define and state the power relations between the legislature and the executive, in order to avoid dominance of one by another. It is also evident that countries with strong Presidential powers tend to be weak on matters of oversight and accountability such as in Ireland, Botswana, Malawi and Venezuela to some extent.

Now that the concepts of oversight and accountability were discussed by considering their theoretical foundation and the rationale underlying them, the next chapter seeks to provide an overview of oversight and accountability within the South African sphere of legislative governance and specifically by emphasising their application in the national Parliament of the Republic of South Africa. Consequential to the deductions made in this chapter, the following chapter focuses on the composition and mandates of the Parliament of the Republic of South Africa, institutional and legislative context of oversight and accountability in South Africa, Chapter 9 Institutions role in oversight and accountability, and the role of the party system and oversight by the opposition.

CHAPTER 3: INSTITUTIONAL, LEGISLATIVE AND POLICY FRAMEWORK

3.1 Introduction

Democracy in South Africa, since its birth in 1994, has been guided by the principles of accountability, accessibility and transparency. There is more focus on these accountability principles than ever before in South Africa's modern political history. The question becomes whether these ideals operate at the level of constitutional principles and the political and the political office bearers still adhere to them and provide them with a more concrete institutional manifestation. The functions assigned by the Constitution and the mandate provided by the people of South Africa during election, provide the legal imperatives for a vision for Parliament. The oversight vision will respond to this call of the people by being a responsive Parliament. The vision of the fourth Parliament was as follows: "To build an effective people's Parliament that is responsive to the needs of the people and that is driven by the ideal of realising a better quality of life for all the people of South Africa".

The vision calls for a people's Parliament to transform the entire society. A Parliament that is able to establish a society based on democratic values, fundamental human rights, and social justice. It aimed to be a peoples Parliament, able to scrutinise and oversee the actions of the executive, as it sought to improve the quality of life of all South Africans in order to build united and democratic South Africa and create a better life for all. The vision put the people at the centre of Parliament's oversight function, thereby promoting a human rights based, participatory democracy.

The idea of a “People’s Parliament” lies at the core of the political vision of the fourth Parliament of the Republic of South Africa. One of the key roles of Parliament is to conduct oversight over the executive. The function of oversight and accountability is to ensure that the executive implements laws as expected by Parliament and instructed by the Constitution. Oversight and accountability enable Parliament to keep control over the legislation it passes and to enhance the constitutional values of accountability. Through oversight, Parliament is able to ensure that the executive is carrying out its mandates, monitor the implementation of its legislative policy, and draw on these experiences for future law- making. The proper implementation of oversight practices ensures effective governance, as the role of Parliament in the monitoring of the implementation of policy may in fact enhance the overall performance of government.

Those tasked with employing oversight are generally afforded the luxury of hindsight and are essentially separated from the responsibility for failure. Parliament is to employ an oversight regime based less on institutional or political “confrontation”. The Parliament’s oversight role is exercised in pursuit of good government, which leads to Parliament also bearing some responsibility for overall government performance.

3.2 Composition and mandates of the Parliament of the Republic of South Africa

The Parliament of the Republic of South Africa is composed of two houses, namely the NA and the NCOP. On the one hand, according to Parliament (2009:11) “Section 42(3) of the Constitution provides that the NA is elected to represent the people and to ensure government by the people under the Constitution”. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinising and overseeing executive action (Parliament 2009:11). According to Parliament (2009:11) “The NA is required by section 55(2) of the Constitution to provide mechanisms to ensure that all executive organs of state in the

national sphere of government are accountable to it; and to maintain oversight of the exercise of national executive authority, including the implementation of legislation and any organ of state”.

On the other hand the NCOP represents the provinces to ensure that the provincial interests are taken into account in the national sphere of government as stated in section 42(4) of the Constitution. The NCOP does this by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces. The NCOP role is to exercise oversight over national aspects of provincial and local government. It contributes to effective government by ensuring that provincial and local concerns are recognised in national policymaking, and that provincial, local, and national governments work together effectively. The Constitution requires Parliament to develop mechanisms for oversight (Parliament 2009:11)

3.3 Institutional and legislative context of oversight and accountability in South Africa

In order to investigate the institutional and legislative context of oversight and accountability in South Africa, the South African model of oversight and accountability, legislative and policy framework for oversight and accountability in South Africa and the mechanisms for conducting oversight and accountability in the Parliament of the Republic of South Africa will be discussed in detail below.

3.3.1 The South African model of oversight and accountability

During the first democratic Parliament (1994-1999) and the second Parliament (1999-2004) the main focus of Parliament was to repeal apartheid legislation and passing new laws in line with the imperatives of a democratic institution (Parliament,2009:5). According to Parliament (2009:5) “The focus especially from 2009 changed from passing legislation to oversight, which included the impact of the laws passed since 1994. The oversight model has been developed

to equip us with an improved standard operating procedure to enhance the capacity of Parliament to discharge its duties”.

It is then against this backdrop, and in the context of sections 42(3) and 55(2) of the Constitution, as well as various provisions that imply oversight functions of the National Council of Provinces, that Parliament through the joint rules Committee established a task team on oversight and accountability. This task team consisted of members from both houses of Parliament and studied the mandates relating to oversight emanating from the Constitution (Parliament, 2009:10). According to Parliament (2009:10) “the task team established three focus groups, that of, the projects focus group, the budget and the committees. The objective was to develop an oversight model for Parliament in line with the Constitution and Parliament’s new strategic vision, together with the realignment of resources to fulfil its mandate with great efficiency”.

The oversight and accountability model highlight the following constitutional provisions that refer directly and indirectly to oversight and accountability (Parliament, 2009:19).

Table 3.1: Constitutional provisions that refer directly and indirectly to oversight and accountability

Section 55(2)	<p>The National Assembly must provide for mechanisms-</p> <p>(a) To ensure that all executive organs of state in the national sphere of government are accountable to it; and</p> <p>(b) To maintain oversight of-</p> <p>I. The exercise of national executive authority, including the implementation of legislation; and</p> <p>II. Any organ of state.</p>
Section 56	The national assembly or any of its Committees may-

	<p>(a) Summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;</p> <p>(b) Require any person or institution to report to it;</p> <p>(c) Compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b);and</p> <p>(d) Receive petitions, representations or submissions from any interested persons or institutions.</p>
Section 66(2)	<p>The National Council of Provinces may require a Cabinet Member, a Deputy Minister or an official in the national executive or a provincial executive to attend a meeting of the Council or a Committee of the Council.</p>
Section 69	<p>The National Council of Provinces or any of its Committees may-</p> <p>(a) Summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;</p> <p>(b) Require any person or institution to report to it;</p> <p>(c) Compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b);and</p> <p>(d) Receive petitions, representations or submissions from any interested persons or institutions.</p>
Section 89	<p>(1) The National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its Members, may remove the President from office only on the grounds of –</p> <p>(a) A serious violation of the Constitution or the law;</p>

	<p>(b) Serious misconduct; or</p> <p>(c) Inability to perform the function of office.</p> <p>(2) Anyone who has been removed from the office of President in terms of subsection (1) (a) or (b) may not receive any benefits of that office, and may not serve in any public office.</p>
Section 92	<p>(2) Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions.</p> <p>(3) Members of the Cabinet must provide Parliament with full and regular reports concerning matters under their control.</p>
Section 93(2)	Deputy Ministers are accountable to Parliament for the exercise of their powers and the performance of their functions.
Section 100(2)	<p>If the national executive intervenes in a province by assuming responsibility for the relevant obligation which that province cannot or does not fulfil, the national executive must submit a written notice of the intervention to the National Council of Provinces within 14 days after the intervention began. The intervention must end if the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention. The Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the national executive.</p>
Section 102	<p>(1) If the National Assembly, by a vote supported by a majority of its Members, passes a motion of no confidence in the Cabinet excluding the President, the President must reconstitute the Cabinet.</p> <p>(2) If the National Assembly, by a vote supported by a majority of its Members, passes a motion of no</p>

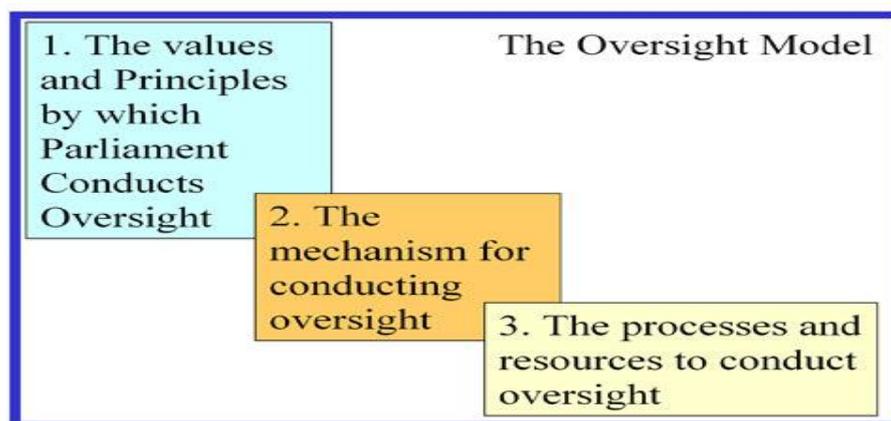
	confidence in the President, the President and the other Members of the Cabinet and any Deputy Ministers must resign.
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(Source: Parliament, 2009:19)

Having identified the constitutional provisions listed by the oversight and accountability model that expresses powers and functions of Parliament on oversight and accountability, the model further provides the primary objectives that describe how Parliament conducts oversight and thus being able to hold the executive accountable. According to Parliament (2009:10) “the rationale for the oversight and accountability model was to scrutinise existing practices and/or mechanisms used as a prototype, something to be measured or standardised, and thereafter interrogate and offer alternatives that could be utilised in the future”. It is therefore important for an oversight and accountability model to therefore comprise features, which include the following:

- The values and principles by which Parliament conducts oversight;
- The mechanism or framework to conduct oversight; and
- The processes and resources required for conducting oversight.

Framework of the Oversight Model



Source: Parliament 2009

Figure 3.1 Framework of the oversight model

The numerous provisions on table 3.1 provide adequate powers for oversight and the enforcement of accountability as they provide powers to committees' e.g. to summon any person to appear before the committee and provide evidence under oath. They further provide power to remove the President through a resolution adopted with a support vote of at least two thirds of Members. The model also provides detailed processes that Parliament should undertake to achieve its constitutional mandate on oversight and accountability. The mechanisms established by the model to fulfil Parliaments oversight and accountability mandate will be discussed in detail under section: 3.2.3 when the mechanisms for Parliamentary oversight and accountability are discussed. It is important to mention that the mechanisms provided by the model on oversight and accountability are established in terms of the Constitution and under the rules developed by the NA and/or the NCOP as houses of Parliament. According to Parliament (2009:38) "the model splits the mechanisms for oversight and accountability into four categories: Category 1 lists tools of established legislation and long-term plans; Category 2 contains tools relating to annual, monthly and weekly activities; Category 3 lists financial instruments; and Category 4 relates to issues arising from institutions supporting Constitutional democracy.

Table 3.2: Categories of oversight and accountability mechanisms

Category 1:	<ul style="list-style-type: none"> • Constitution of the Republic • Legislation • Government Programme of Action [5-year plan]
Category 2:	<ul style="list-style-type: none"> • State-of-the-Nation Address • Questions (Written and oral) • President • Deputy President • Ministers • Members' statements • Ministerial statements • Debates in the House

	<ul style="list-style-type: none"> • Matters from constituency work • Private Member's bills • Individual Member's oversight • Committee reports on legislation and oversight activities • Committee reports on international agreements • Departmental strategic plans • Departmental current and past annual performance plans • Annual reports (including annual financial statements, statements on programme performance and human resource information) • Performance contracts • Departmental compliance with parliamentary Committee recommendations.
Category 3:	<ul style="list-style-type: none"> • Budget Speech • Estimates of National Expenditure (ENE) • Division of Revenue Bill • Estimates of National Revenue • Budget Review • Ministers' budget vote speeches • Departmental budget votes • Treasury Regulations relating to strategic planning • Reports of the Auditor-General (including performance reports) • Treasury reports (monthly and quarterly reports) • Audit Reports (Scopa) • Medium-Term Budget Policy Statement (MTBPS) • Adjusted Estimates of National Expenditure • Intergovernmental Fiscal Relations report • Public Finance Management Act (PFMA) • Financial statements (monthly financial reports and quarterly performance reports) • Statistics South Africa reports.

Category 4:	<ul style="list-style-type: none"> • Reports on investigated matters of relevance by institutions supporting constitutional democracy (ISDs) and other statutory institutions supporting democracy for consideration by Parliament’.
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The following discussions will consider the legislative and policy framework for oversight and accountability in the South African Parliament. This chapter will conclude by considering the mechanisms and processes (mechanisms for Parliamentary to ensure oversight and accountability) adopted by the South African fourth Parliament, in order to fulfil its constitutional mandate of ensuring that oversight and accountability by the executive is realised.

3.3.2 Legislative and policy framework for oversight and accountability in South Africa

The legislative and policy framework for the implementation of oversight and accountability in the national Parliament in South Africa is derived from the Constitution (1996). The role of Parliament on accountability and oversight is therefore backed and protected by the Constitution, by it unambiguously indicating the institution’s powers and responsibilities of oversight and accountability. Oversight and accountability are entrenched in the Constitution in a number of sections (section 55(2), 56, 69, 66(2), 89, 92 and 100 of the Constitution. Related provisions in the Constitution (sections 17, 59, 70, 72, 115, 118) set the tone for public involvement and participation in the Parliament legislative process (Constitution, 1996).

All these provisions are meant to build accountability, openness and transparency, which together with public participation ensure that the executive arm of government is accountable, transparent and open while empowered to govern after each election. Certain functions that the Constitution mandates to Parliament act as policy guidelines to ensure that oversight and accountability are realised. For example, section 55(2) of the Constitution requires the NA to provide for mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it and maintain oversight of

the national executive authority, including the implementation of legislation and oversight over any organ of state (Parliament, 2007:8).

According to Parliament (2007:8) “in terms of sections 92(2) of the Constitution, members of cabinet are collectively and individually accountable to Parliament”. It is therefore the expectation for cabinet ministers and the executive at large to conduct them in accordance with the Constitution to provide Parliament with full and regular reports on matters under their respective departments and portfolio’s.

Since Parliament works closely with the nine Provincial Legislatures, an Oversight Guide for Committee Staff has been developed by the Committee Staff Forum which is a forum that is established by the Committee Staff of Parliament and all nine Legislatures (South African Legislative Sector, 2008). It provides guidelines on how to best assist the members of Parliament as they plan and implement oversight and accountability within the South African legislative Sector. The document indicates the legislative sector’s policy position through a number of policy principles, for example the strategic goal of “Deepening and entrenching people-centred democracy in South Africa”. This strategic goal is linked to the strategic objective related to strengthening the oversight function, namely “overseeing and scrutinizing executive action (oversight)”.

The Parliament oversight model (2009) and the oversight model of the South African Legislative Sector (2011) has been adopted as working documents for the Parliament of the Republic of South Africa in order provide a policy guide for conducting oversight and accountability planning and implementation.

3.3.3 Mechanisms for conducting oversight and accountability in the Parliament of the Republic of South Africa.

The Parliament of the Republic of South Africa has put in place mechanism that ensures that it fulfils its constitutional obligation on oversight and accountability.

These mechanisms are established in terms of the Constitution and under the joint rules of both Houses (NA and the NCOP) but also through individual rules of each House (Parliament, 2009:28). The Constitution mandates Parliament to establish mechanisms, rules and procedures that enables it to conduct oversight and accountability. Section 55 (2) of the Constitution indicates that the NA must provide for mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it, and to maintain oversight of the national executive authority (Constitution, 1996)

The Parliamentary mechanisms employed include Plenary debates, questions to the executive, motions without notice, notice of motion, budget votes, members statements, statements by cabinet members, petitions, approval of annual budgets and strategic plans and committees role on oversight and accountability. These will be discussed in detail below.

3.3.3.1 Plenary debates

The concerns of MP's constituents regarding specific government programmes and legislation including improvements on service delivery are able to be brought to the attention of the executive through plenary debates (Parliament, 2009:33).

Parliamentary debates are oral exchanges of opinions in general that are intended to facilitate the chamber's collective decision-making on certain issues (Yamamoto,2007:62). The debates can be on issues chosen by Parliament or be specifically on a report or work conducted by a Parliamentary committee (see 3.2.3.4). The rules of the NA and those of the NCOP on debates give guidance to MP's and the houses in general on how to express their views but at the same time allowing members to bring a particular matter to the "floor".

3.3.3.1.1 Questions to the Executive

One of the mechanisms utilised by Parliament to enhance its capacity to ensure that the executive is accountable is that of questions to the President, Deputy President and Ministers. Questions are a vital oversight tool. The questions put to the executive can be in a form of oral or written reply on matters for which individual ministers are responsible. According to Yamamoto (2007:49) “a Parliamentary question is, by definition, a request for information”. Question time allows MP’s not only to question the executive on matters of policy, but also on policies implemented or even drafted and other actions of the executive as they daily conduct themselves in government. It is an information seeking tool for Parliamentarians as they seek to fulfil their oversight role especially when utilising written-questions which are more effective. The executive is obliged to provide answers and these questions also benefit the rest of the Parliamentary Chamber or House by having replies publicly provided. The object of questions is not only to obtain information but also to press for action (Parliament: 2004).

In the NA of the Parliament of the Republic of South Africa, questions may not:

- Express an opinion or seek the expression of one;
- Contain arguments, inferences or imputations;
- Contain unnecessary epithets;
- Contain rhetorical, controversial, ironical or offensive expressions; or
- Contain extracts from newspapers or books, or paraphrases or questions from speeches.

In the NCOP question time takes a different approach than it does in the NA, as the House is a House of provinces, Members of the NCOP are delegates from Provinces ensuring that many government programmes are implemented by provinces working hand in hand with the national government. Question time in the NCOP is provincial based than party based in that question time in the NCOP could be used by provinces to understand the way in which the national government is fulfilling its part on these shared responsibilities.

Delegates to the NCOP utilise question time as an opportunity to ask a national minister why a particular policy in an area of concurrent jurisdiction is not implemented, when it will be implanted or why the implementation is slow. The engagement mainly entails provinces engaging with the executive rather than individual members influenced by a certain party policy line engaging with the national executive. The reason behind this difference is that the oversight role of the NCOP is to draw provincial and local experiences into the national debate when matters that affect those levels or spheres of government are considered.

3.3.3.1.2 Motions without notice

According to Parliament (2004:114) a motion which would otherwise require notice, may be moved without notice provided not a single member present objects. It is common practice, but not required for political parties to consult before the House sits when seeking to move a motion without notice and inform the Presiding Officer of the intention to do so, thus avoiding any “ambush”.

The motions without notice are moved when the Presiding Officer calls for any formal motions, usually at the commencement of the day’s sitting. If there is any objection, the motion is not moved but converted to a notice of motion (Parliament, 2004:114).

3.3.3.1.3 Notices of motion

Notices of motion are one of the mechanisms of oversight in order to bring issues to Parliament for plenary debate or decision. A notice must be given of every motion (exceptions exist), since in principle the House must be informed in advance of any substantive motion, to give members and political parties time to prepare to debate it (Parliament, 2004:115).

Giving notice of a motion can only be dispensed with, provided each member present in the House agrees. Therefore, if a member wishes to move a motion without notice, the party whip should consult with other parties in advance to

obtain their consent. If this is not done, members are unlikely to agree to a motion to be proceeded with, where no notice has been given. Exceptions exist when the motion:

- Is by way of amendment to a draft resolution;
- Raising a point of order or a question of privilege;
- For the postponement or discharge of, or giving precedence to, an order of the day;
- Referring a bill to a committee;
- By the member in charge, proposing a draft resolution on the report of a Committee immediately after the debate on the report has been concluded; or
- In regard to which notice is dispensed with by the unanimous concurrence of all the Members present.

Notices of motion are therefore a vital tool mechanism to bring matters of political and general importance before Parliament for debate and or decision.

3.3.3.1.4 Budget votes

According to Parliament (2009:32), budget votes take place when the minister of finance announces the budget projections for the following financial year, as well as the departmental budget votes of each minister. The reason for presenting the budget in Parliament is to seek approval of the budget from Parliament, but before that can happen (approval of budget), each Parliamentary committee hold hearings with the government department over which that committee exercises oversight and check whether the department kept the promises of the previous financial year when it spent its budget. The budget votes are debated in the NA and the NCOP once committees have finished discussing the different budget votes (Parliament, 2009:32).

The budget votes also provide an opportunity for government to indicate where they will get the money to spend, i.e. how the citizens will be taxed and how much will be borrowed. Democracy then requires that the government must

spent money approved by the people, which in this case is approved by their representatives in Parliament. The power to approve the government budget gives Parliament an oversight power to check if they are doing what they promised to do with the state money. It is important to note that if Parliament rejects the budget, the current government is expected to resign and a call for election of a new government must be made.

3.3.3.1.5 Members statements

Member's statements are also a mechanism to conduct oversight over the government and hold it to account. MP's are afforded the opportunity to make statements on any matter or subject that a member wishes to raise relevant to the national sphere of government, including topical international and national issues and constituents' matters in the House (Parliament, 2009:33).

Even though cabinet member's, are also members of Parliament except the President, members statements are made by members who are not members of the executive. Provision is also made for executive members to respond to statements directed to them or made in respect of their portfolios. The opportunity for ministers to respond will follow the expiry of members' time. In the absence of a particular minister, the relevant deputy minister or minister from the same cabinet cluster may, in that order, be given an opportunity to respond.

3.3.3.1.6 Statements by Cabinet Members

A cabinet member may make a "factual or policy" statement relating to government policy, any executive action or other similar matter of which the Assembly should be informed. The cabinet minister in question asks the Presiding Officer for an opportunity to make such a statement, which should not be longer than 20 minutes. The rules of the NA provide that whenever possible, a copy of the statement should be provided to the leader of each party when or before the statement is delivered (Parliament, 2004:128).

With regard to the above-mentioned, it is important to note that the words “factual or policy statement” signify that such a statement is not used for party-political purposes (Parliament, 2004:128). Following the statement by the cabinet member each party may respond.

3.3.3.2 Petitions

According to the Constitution of the Republic of South Africa, 1996 “section 56 (d) and 69 (d) of the Constitution provides for the NA and the NCOP of Provinces to receive petitions, representations or submissions from any interested persons or institutions”. A petition refers to a formal request (to Parliament) for its intervention in a matter. These petitions can be about lack of service delivery by a government department. Parliament then intervenes on behalf of the institution or individual that is aggrieved and ensures that the executive accounts for such non-delivery of public services.

According to section 17 of the Constitution (1996), “Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions”. Petitions in the NA must be supported by an MP in order for petitions to be considered. The NCOP does not require an MP’s support for a petition, but the petition should be in a form prescribed by the Chairperson. Parliament therefore utilises petitions to conduct oversight over the executive.

3.3.3.3 Committees role as a mechanism of Parliamentary oversight

In 1997, South Africa moved from a single budget year to a multi budget framework that is known as the Medium-Term Expenditure Framework (MTEF). The MTEF is an integrated planning and budget formulation process in terms of which the executive’s administration, government departments and provincial administrations develop credible outputs, projects and programmes for allocating resources to achieve strategic priorities. These are then tabled to Parliament committees and the details of the specific targets that the institutions

will aim to achieve in the budget year and the succeeding years of the MTEF. When conducting oversight, Parliament always ensures that government plans and performance are in line with the priorities as expressed in the strategic plans and the MTEF.

The Budget Office was put in place during the fourth Parliament in order to accept, amend or reject the budget proposals of the executive. Its existence emanates from the Money Bills Procedure and Related Matters Act, but it is not limited to the budget. Instead, it also has bearings on all other money bills, monitoring and synthesising matters and reports tabled and adopted in a house with budgetary implications, including committee reports. The Budget Office is expected to keep abreast of policy debates and development in key expenditure and revenue areas.

According to Obiyo (2006:53) “ one of the most profound changes that have overtaken South Africa’s system of government since 1994 is the new, powerful role the Constitution has accorded to the parliamentary committee system, which during the first session of Parliament, became in many ways as influential as that of the United States Congress”. Obiyo (2006:55) further indicate that under the apartheid government there were only 13 committees, their hearings were held in secret, they had very limited powers, and they existed essentially to rubber-stamp legislation put forward by the National Party (NP) government. One other difference is that the parliamentary committees are open to the public and the press, under the democratic dispensation, compared to their hearings held in secret during the apartheid era.

According to Kyle and Peacey (2002:2) “the very term committee has a potential for confusion, whereas it is to mean a collective group, panel or body of members delegated to perform a particular function, each member of such a group was then designated a committee”. There are a number of mandates that committees are expected to fulfil. These are not only limited to the role of oversight over the executive but also scrutiny of legislation and interaction with

the public and external factors. Membership to a committee or representation is informed by proportional representation of parties in Parliament.

The mandates of committees in the Parliament of the Republic of South Africa are provided for in the rules of each house and the joint rules (Parliament, 2009:29). Apart from the mentioned mandates of committees, their work also include study visits where they physically visit sites to gain first-hand information, the subpoenaing of individual to appear before the committee, the assessment of the impact of service delivery, and the writing of reports for adoption by the committee with recommendations to be considered by the respective houses. Even though committees provide a platform in which proposed bills, laws, and other matters affecting the state are studied in detail by MP's, they also play the role of being an oversight agency for the Parliament. They are oversight agencies for Parliament as they oversee the functioning, structure, and policy of the different government departments for which they are responsible. Their oversight function includes making recommendations about any aspect of the government departments.

In the NA, the portfolio committees typically oversee a parallel government department, ministries or executive agencies. In the NCOP, the select committees are clustered according to specific area of responsibility of the departments. This means that the select committees oversee the work of more than one national government department. The reason is that only 54 of the 90 NCOP are permanent delegates while in the NA there are 400 members of the assembly (Parliament, 2008:34). This study is focusing on committees that play an oversight role with regard to government departments and not internal committees, which mainly concern themselves with internal organizational and management matters including matters of rules within the two houses.

According to Parliament (2009:31) "the two houses of Parliament may establish joint committees that are established in terms of the joint rules and have similar powers to Portfolio Committees (PC) and Select Committees (SC), except that they have specific mandates relating to transversal issues, such as women,

youth, children and disability”. The reports presented to the Houses by the Committees include:

- Legislation (in terms of section 74,75,76 or 77 of the Constitution);
- Study tours;
- Oversight activities of committees, including responses to annual reports and financial statements of departments;
- International agreements;
- Private member’s legislative proposals;
- Budget votes petitions;
- Statutory provisions (for example the filling of vacancies in a statutory body);
- Annual reports of committee activities and performance against their strategic plans; and
- Any matter referred to committees for consideration and report in terms of NA Rule 137 and NCOP Rule 102 (Parliament, 2009:30-31).

According to Parliament (2009:31) “once a report has been adopted by the house, the Speaker communicates the recommendations of the house to the relevant minister and copies the relevant house Chairperson, PC Chairperson and Director-General. The Speaker also requests the minister to direct his or her responses to the Speaker for formal tabling”. The office of the President is informed via the office of the Secretary to Parliament who communicates all resolutions to the Director-General in the Presidency.

The above discussion indicates the constitutional powers of the NA committees. Some scholars are of the view that the Constitution does not grant the NCOP committees explicit powers to undertake oversight over the executive. However, section 92 (2) of the Constitution (1996) demands that “cabinet members collective and individual should be kept accountable to Parliament for the exercise of their powers and the performance of their functions”. Obiyo (2006:62) indicates that the NCOP’s approval and regular reviewal are required, both in the event of national intervention in provincial administration (should a province not fulfil an executive obligation in terms of legislation or the

Constitution) and provincial intervention in local government (when a municipality cannot or does not fulfil an executive obligation required by legislation). Furthermore, Corder, Jagwanth and Soltau (1999:10) indicate that “in light of the fact that cabinet is collectively and individually responsible to Parliament, and that the Council is granted extensive powers in instances relating to interventions in terms of provisions like section 92,100 and 139, it appears that the Council is also mandated with an oversight function”. This is illustrated by the fact that the NCOP has an oversight role to protect the spheres of government under section 125 (4) and deal with the disputes regarding the administration capacity of provinces, which the NCOP is expected to resolve.

According to Obiyo (2006:64) “the actual powers committees have in law-making and the oversight process is essentially about matching formal powers with the capacity to utilise such powers”. These actual powers committees have contribute to effective oversight within the portfolio and select committees of Parliament and thus leading to the committees being called the “engines of Parliament”, but for these engines to run smoothly a certain combination of conditions should prevail in order for the committees to gain effective power. According to Ahmed (2011:55),citing Rockman, indicates that “among such factors the most important one which in one way or another affects the Parliamentary committees overseeing role are; the legal authority to compel change, the committee relations with the executive and its official as well as the programs and policies, the resources such as the staff of the committee, the roles of the individual in the committee, the party system and the composition of the committee, and the structure, prestige, and leadership of the committee”. From the above discussion one cannot help but to think that in the case of a Parliament like South Africa’s with two houses, in the form of the NA and NCOP that it would be important, within the rules that committees are clustered for oversight purposes. This should be done to enable joint reporting on matters and thus such cluster reports should compelling the legal authority to enforce change, which is then easily achievable.

One noticeable difference between the third Parliament and the fourth Parliament is that a number of new committees were set up in the fourth Parliament. This was done in order to ensure that Parliament exercise oversight over the executive. The additional committees include the PC and SC on women, children and People with disabilities and also the PC and SC on Economic Development.

In line with the changes in government departments, committees dealing with agriculture, water, tourism, minerals, education, energy and environmental affairs were reconstructed and their oversight portfolios changed to accommodate the department's structures. Committees created during the fourth Parliament include the Standing and Select Committees on Finance and Appropriations in order to conform to the Money Bills Amendment Procedure and Related Matters act. The Department of Performance Monitoring and Evaluation and the National Youth Development Agency are overseen by the Standing Committee on Finance. According to the Parliamentary Monitoring Group (2014:10) "one Committee that has not been formed, despite ongoing requests from the IFP, is an oversight Committee over the Presidency". This means that the Presidency's budget is presented to the NA without MPs having an opportunity to question how, where and what amount are spent by the Presidency as part MPs oversight Constitutional mandate.

One other matter noticed is the need to review the Reserve Bank Act (Act No.90 of 1998) in comparison with section 223-225 of the Constitution of the Republic of South Africa for purposes of aligning the Act with the Constitution of the Republic of South Africa so that Parliament may exercise oversight over it. Section 37 of the Reserve Bank Act requires that the Minister of Finance ensures compliance with the Act by giving notice of the non-compliance to the board of directors of the Reserve Bank and require compliance within a specific period. Furthermore, in the event of persistent non-compliance, the Minister may apply to the High Court to compel compliance. The South African Reserve Act need to be reviewed so Parliament may exercise oversight, and not the High Court, especially by mandating the Reserve Bank through its Governor to

report to the Portfolio Committee on finance about implementation of monetary policy, submit audit report and audited financial statements.

3.3.3.4 Fiscal oversight

The Money Bills Amendment Procedure and Related Matters Act came into effect in April 2009. It gives Parliament powers to amend the budget and other money bills before Parliament. In terms of the Act, Parliament is generally involved in four processes that have a direct bearing on state finances, namely the tabling of the Medium Term Budget Policy Statement (MTBPS), the processing of the Main Budget which starts in February and ends around June, the Budgetary Review and Recommendation Reports (BRRR) season which takes place in the period between the passing of the Budget and tabling of the MTBPS, and the tabling of Adjustments Appropriation Bill which takes place at the same time as the processing of the MTBPS.

Parliamentary committees have had to participate in all these processes, but the lack of technical capacity was identified as a concern. In order to assist with these technical capacity challenges, section 15 of the Act established a Parliamentary Budget Office (PBO) with the objective to provide independent, objective, and professional analysis and advice to Parliament and its committees on matters related to budget and Money Bills. Prior to the enactment of the Money Bills Amendment Procedure and Related Matters Act of 2009 (Act 9 of 2009), Parliament's function in respect of the budget could be defined as that of a budget-approving Parliament. This was the case because following its tabling in the NA, the Budget would be referred to the finance committee, which would conduct public hearings on it. The committee would then report to the NA, which would pass the Budget and transmit it to the NCOP.

Once transmitted to the NCOP, the select committee on finance would process it and report it without amendments. The Constitution in section 77(3) provides that an Act of Parliament must provide for a procedure to amend Money Bills before Parliament and thus the promulgation of the Money Bills Amendment Procedure and Related Matters Act. In the fourth Parliament, the expectation

was then that the Parliament would move from being a budget-approving legislature or budget-influencing legislature into a budget-making Parliament in that it utilised both the legal authority and the technical capacity to amend or reject the executive's budget proposal and to substitute with a budget of its own.

During the fourth Parliament through the PBO, it was then expected that Parliament would be able to review government budget documents, such as the budget Strategy Paper, Budget Outlook Paper and Economic Survey, and prepare budget briefs for members of Parliament. The activities in Parliament would grow to include policy analysis of the budget speech and identification of issues for debate, including policy analysis of revenue measures proposed in the budget.

The activities introduced by the Money Bills Amendment Procedure and Related Matters Act, include providing analysis of Finance Bill for implications of proposed tax measures and review of Appropriation Bill figures for consistency with budget votes already passed. The PBO also ensure fiscal oversight over the Executive by providing analytical backup for Committees on various issues which include:

- Backup when bills are referred to them;
- Responses to request from individual legislators, Committees and caucuses;
- Preparation of budget briefs/newsletters for Parliament; and
- Analysis of various reports, such as quarterly reports.

The planning, budgeting and reporting cycle describes the relationship between these process and emphasises that the executive is accountable to the relevant elected body for the entire process (National Treasury, 2007:4)

According to Lienert (2010:1), “there has been a concerted effort in South Africa to build a more transparent, accountable and participatory system of fiscal governance. The 1996 Constitution recognizes parliament and civil society as key players in democratic budgeting processes. The legislature’s active engagement in the Budget process is crucial for good governance and fiscal transparency”. Lienert (2010:1) is supported by Verwey (2009:4) who states that “Most research has shown that genuine public participation and parliamentary oversight over budget do not only increase the social ownership of the budget, but also the effectiveness of allocation, minimizing waste and reduces social conflicts over the Budget”.

This study agrees with Lienert (2010:1) and Verwey (2009:4) as they articulate the notion of “democratizing the budget process”. The involvement of Parliament in the budget process not only encourage fiscal discipline but also leads to prudent fiscal management by reducing government deficit and increasing transparency through an increase in accountability. This study firmly suggests that increased accountability promotes good governance and anticorruption. The evidence of a PBO is not a benchmark for democracy. According to Wehner (2004:2) “Many democracies, such as Germany and France, do not have PBOs, but their Parliaments still play strong Budgetary oversight roles. These countries have generally strong Parliamentary committees, such as Public Accounts and Budget Committees, which play active oversight role”.

Strong democracies exist due to effective Parliaments. According to Carrillo-Florez and Petri (2010:14) “the capacity of Parliaments to actively intervene in the Budget process, not only in its adoption, but also in its elaboration and in monitoring spending is an indication of its effectiveness”. The key becomes how each Parliament assumes its oversight role as even established democracies,

such as the United Kingdom, Parliamentary oversight over the Budget has also progressively declined (Davey, 2000).

Non-performing and ineffective Parliaments exist in both in developed and developing democracies due to institutional weakness, resources and organizational capacity. This contention is supported by Diamond (1997:31) when he indicates that “if legislatures are to become meaningful areas for injecting the interests and concerns of their constituencies into the policy process, they must have sufficiently elaborated and resourceful organizational structures so they can engage, challenge, and check executive officials and state bureaucracies”. The fourth Parliament through its fiscal oversight and having powers to amend the budget could exert its constitutional mandate of overseeing the executive.

3.4 Chapter 9 Institutions role on oversight and accountability

In addition to the oversight and accountability mechanisms discussed under 3.3.3 that are utilised by the Parliament of the Republic of South Africa to fulfil its mandate of oversight and accountability, chapter 9 of the Constitution creates a number of institutions to support democracy. The institutions supporting democracy (ISD) are seven independent institutions. Expected to be impartial, subject only to the Constitution and law, they report at least once a year on their functions to the NA and on their budget expenditure.

The institutions supporting and strengthening democracy as mandated by the Constitution are as follows:

- Auditor-General of South Africa (AGSA)
- Commission for Gender Equality (CGE)
- Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Commission)
- Independent Electoral Commission (IEC)
- Public Protector (PP)

- South African Human Rights Commission (SAHRC)
- Independent Communication Authority of South Africa (ICASA)

According to the report of the independent panel assessment of Parliament, the institutions supporting democracy have a unique role to play with regard to oversight, as they conduct extensive research, possess technical expertise, and exercise specialised functions such as the auditing of public accounts Parliament (2009:44).

According to Hlekiso (2012) “they are constitutionally enabled to monitor, regulate, advise and assist the legislatures in conducting oversight”. Because these institutions have different mandates and unique styles of operating, they then also take different forms of interacting with Parliament. The report of the independent panel assessment of Parliament indicates that two key roles of institutions supporting democracy in relation to Parliament; firstly together with Parliament, the institutions supporting democracy act as “watch-dog” bodies over the government and organs of state, and secondly, they support and aid Parliament in its oversight function by providing it with information that is not derived from the executive Parliament (2009:43). As indicated earlier, the institutions supporting democracy must annually engage with the NA on their respective activities and according to the report of the independent panel assessment of Parliament (2009:44) “some of the institutions, particularly those concerned with human rights matters, may submit substantive reports to the National Assembly for consideration and action”. An example is that section 184(3) of the Constitution, the South African Human Rights Commission each year must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights, concerning housing, health care, food, water, social security, education and the environment (Section 184(3) of the Constitution of the Republic of South Africa). These reports according to the report of the independent panel assessment of Parliament (2009:44) are an important source of information and can enhance Parliament’s oversight of government departments considerably.

3.4.1 Auditor-General of South Africa (AGSA)

The AGSA is the independent Supreme Audit Institution of South Africa and has a constitutional mandate to carry out audits of government accounts and to strengthen the country's democracy by enabling oversight and accountability in the public sector through auditing in order to determine whether the executive did in fact implement the budget as appropriated by Parliament. The AGSA reports to the Standing Committee on Public Accounts (SCOPA) and accounts to the standing committee on AGSA as a committee of the NA. Its powers and functions are further prescribed by the Public Audit Act 25 of 2004 (PAA).

According to Hlekiso (2012), the Public Audit Act 25 of 2004 provide guiding principles to the AGSA and gives effect to the provisions of the Constitution by establishing the oversight mechanism, which is the Standing Committee on Auditor-General (SCoAG) to oversee the AG. Section 10(3) of the PAA prescribes that SCoAG must protect and assist the AGSA in order to protect its dignity, impartiality, independence and effectiveness (Hlekiso, 2012). The AGSA applies a stringent, national and internationally accredited audit directive in performing its audit functions and this ensures that the audit opinion of the AGSA provides an accurate and fair assessment of an auditee, thus enabling the legislatures to perform effective oversight (Hlekiso: 2012).

Table 3.4: General findings in Audit Outcomes

No	General Findings in Audit Outcomes
1.	Shortcomings on internal controls that limit the government in achieving clean audits relate to reporting on predetermined service delivery objectives and compliance with laws and regulations.
2.	Lack of oversight by the leadership in the provincial and local government spheres.
3.	Lack of capacity to manage financial and performance information and compliance with laws and regulations which is further eroded by shortcomings in human resource management in some auditees and

	the lack of information technology (IT) governance frameworks in some auditees.
4.	Repeated receipt of qualified audit opinions without any visible improvement in a number of auditees.

Source: Hlekiso, (2012)

The table above speaks to most of the AGSA findings that leads to qualified audit report and triggers the need for Parliament to scrutinise the government functions and any institution that is authorised in terms of any law to receive money for public purpose and thus assist Parliament with its oversight mandate.

3.4.2 Commission for Gender Equality (CGE)

The CGE derives its mandate from section 187 of the Constitution, from the CGE Act and from the Promotion of Equality and Prevention of Unfair Discrimination Act (Parliament, 2012:19). The core business of the CGE is to ensure the existence of gender equality and the inherent right to dignity on the basis of one's gender. This is confirmed by Cetywayo (2014:2) when she indicates that the "CGE's complementary oversight mandate in the context of this democracy is focused on gender equality". The CGE role in supporting the NA to fulfil its oversight constitutional obligation on the executive and other state implementation agencies is realised when the commission in its planning (strategic and annual performance plans) focuses on how education, health, rural development, access to work and crime impact on gender rights and issues. The constitutional expectation is that the commission will advise and give inputs in the form of recommendations to Parliament especially relevant committees that are considering any legal issue that may have an effect on gender equality. The powers of this commission are regulated by the Commission on Gender Equality Act 39 of 1996 (CGE Act). These powers include that the commission should:

- Monitor all organs of society to ensure that gender equality is safeguarded and promoted;

- Assess all legislation from a gender perspective;
- Research and make recommendations to Parliament and other authorities;
- Educate and inform the public on gender issues;
- Investigate complaints on gender-related issues;
- Monitor South Africa's progress towards gender equality in relation to international norms.

According Hlekiso (2012) "the Commission for Gender Equality co-operates with other ISDs to promote human rights and democracy, including the South African Human Rights Commission and the Public Protector".

3.4.3 Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Commission)

The CRL is established in terms of Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act 19 of 2002. The Commission is expected in terms of the Act to develop peace, tolerance, friendship, and national unity among and within cultural, religious and linguistic communities, based on of equality, non-discrimination and free association. The rationale behind the establishment of the commission is that if one looks at the historical divides in South Africa, those divisions of the past need healing in order for the country to move forward and develop. The function of the commission is to give advice to NA Portfolio Committees on matters and legislations that might have an impact on achieving and establishing non-racial and non-sexist society, which are based on democratic values that promote the basic human right and unity in our diversity.

3.4.4 Electoral Commission (IEC)

The functions of the IEC are set out in terms of Section 190(1) of the Constitution. It is a commission established by the Constitution to promote and safeguard democracy in South Africa. It promotes and safeguard democracy by ensuring that free and fair elections are possible. The commission is

accountable to the NA and is independent of the government in terms political influence. The IEC report to the NA on matters of importance such as preparations for elections thus enabling the NA to intervene on matters that affect the countries governance and hold the executive accountable where necessary e.g. failure of the treasury to allocate sufficient funding for free and fair elections or the department of home affairs not issuing identity documents.

3.4.5 Public Protector (PP)

Provisions of section 181(1) (a) of the Constitution of the Republic of South Africa establishes the PP. Its main responsibility is to ensure government accountability and, once maladministration is identified, be able to provide remedies to stop the abuse of authority. The Public Protector Act of 1994 indicates that the mandate of the PP include strengthening Constitutional democracy by investigating and redressing improper and prejudicial conduct, maladministration and abuse of power in state affairs (Public Protector Act 23 of 1994). According to the Public Protector Act 23 of 1994 the PP must resolve administrative disputes or rectify any act or omission in administrative conduct through mediation, conciliation or negotiation.

According to Hlekiso (2012), the PP advises on appropriate remedies or employs any other expedient means. The PP report and make recommendations on findings. Hlekiso (1994) indicates that the PP has jurisdiction over all organs of state, any institution in which the state is the majority controlling shareholder and public entity as defined in section 1 of the Public Finance Management Act of 1999 (PFMA). The PP is accountable to the NA and reports annually on its activities, performance and budget expenditure. It is through the reports that the PP submit to the NA that Parliament is able to conduct its oversight mandate over the executive. According to Hlekiso (2012) “although the Public Protector is entrusted with the above constitutional responsibilities and producing information and knowledge that is critical to the exercise of oversight over the executive, it is one of the ISDs that the legislatures are not making full use of to facilitate effective oversight”.

3.4.6 South African Human Rights Commission (SAHRC)

The SAHRC is mainly focused on Human Rights as Human beings in the face of the earth and these rights are protected in the Constitution on chapter two, as they are referred as the bill of rights. The SAHRC is established by section 181(1) of the Constitution and the Human Rights Commission Act 54 of 1994. According to the Constitution (1996) the functions of the Human Rights Commission as outlined in section 184 are “to promote respect for human rights and a culture of human rights; promote the protection, development and attainment of human rights; and monitor and assess the observance of human rights in South Africa”. Human Rights Commission Act 54 of 1994 regulate the powers of the Human Rights Commission in that they must investigate and report on the observance of human rights; take steps to secure appropriate redress where human rights have been violated; carryout research and educate; each year the Human Rights Commission must require relevant organs of state to provide the commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment; develop an awareness of human rights among the people of South Africa; make recommendations to the state to improve the carrying out of human rights; undertake studies and report to Parliament on matters relating to human rights; and investigate complaints of violation of human rights and seek appropriate relief.

The act clearly indicates the functions of the Human Rights Commission in relation not only to government but also Parliament. Hlekiso (2012) indicates that even though valuable information and knowledge that is critical to oversight of the executive have been produced by the commission, it has not been fully utilised by the legislatures to facilitate proactive and effective oversight. As indicated above, the commission is accountable in Parliament to the NA and reports to the PC on justice and constitutional development on its annual activities and budget spending. Its reports are to be used by Parliament to serve

as impetus for debate on matters of national interests surrounding issue of Human Rights.

3.4.7 Independent Communications Authority of South Africa (ICASA)

Section 192 of the Constitution (1996) demands that a “National legislation must establish an independent authority to regulate broadcasting in public interest, and to ensure fairness and diversity of views broadly representing South African society”. According to Hlekiso (2012), “although not specifically dealt with under Chapter nine of the Constitution, the Independent Communications Authority of South Africa (ICASA) is an important role player in the advancement of our Constitutional Democracy”.

ICASA is established by the Independent Communications Authority Act of South Africa. The ICASA amendment Act 3 of 2006 (ICASA Act) includes the Postal Services, which was previously regulated by the Postal Authority Act 22 of 2002. According to Hlekiso (2012), “ICASA is a licensing body, a regulator and a quasi-judicial body because it licenses, regulates, adjudicates and issues sanctions”. Section 34 of the Constitution gives powers to ICASA to adjudicate and issue sanctions, as it prescribes that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum (Hlekiso, 2012). The main focus and responsibility of ICASA is ensuring that free and open airwaves while protecting democracy.

ICASA is accountable to the NA and appears before the PC on Communication on average twice a year to report on its activities and budget expenditure. According to the ICASA Act, the Authority must present the Minister of Communication with its annual report, which the Minister then tables in Parliament. The confusion that this can create is the perception that ICASA is not independent to the executive. According to Hlekiso (2012), “ICASA would be of assistance to Parliament as it possesses technical and litigation expertise which help to produce a very important information and knowledge that

Parliament may make full use of if it is to facilitate proactive and effective oversight". Frequent meetings took place during the fourth Parliament between ICASA and the PC on Communication and the information gained from ICASA was utilised by the Committee in its oversight function while considering ICASA's Performance Management System as adopted by the National Assembly on 1 March 2012 (Parliament,2012).

3.5 The role of the party system and oversight by the opposition

According to Dahl (1966: xiii - xiv) "by its nature a Parliament is not a monolithic and homogeneous institution, but a representative assembly, where the basic idea is that different interests and ideas should be represented, and where there will always be differences of opinion and always a distinction between the majority and one or more opposing minorities". In modern Parliaments, this is organised along political party lines, with the basic distinction running between the governing party or parties and the opposition parties that are represented in Parliament (Ahmed, 2011:64). This study is in agreement with Dahl (1966: xiii-xiv) because democracy is an inclusive process in which all political forces take part in representing all citizens.

According to Schmitz (1988:2), "what has not changed, however, in our modern liberal-democratic society is the hallowed principle that government must rest on the consent of the governed which means, *inter alia*, that the minority accepts the right of the majority to make decisions, provided that there is reciprocal respect for the minority's right to dissent from these decisions and promote alternative policies". In a Parliamentary democracy system, decisions are taken by the majority through, for example, a voting system, the executive usually have the support of the majority, though not all the times. In a positive Parliamentarism, the executive has explicit support of the majority and, in a negative Parliamentarism, the executive government can sit, as long as it does not have the explicit distrust of the majority, as expressed in a vote of no confidence. If one or more of the opposition parties vote for the executive within a positive Parliamentarism, a minority government can occur.

The opposition constitute a small number of Parliamentary seats and do not have the power to make decisions as they cannot govern with their small number of seats. It functions by offering an alternative political government while at the same time protecting the interests of its constituencies (voters). The opposition further offer alternatives to decisions taken or proposed by the government and its majority Parliamentary representatives, debates issues emanating from infamous decisions taken, scrutinises and exercise oversight on the activities and budgetary proposals of the government/executive, and enhance stability, accountability and transparency in decision-making and implementation within the Parliament processes and other available constitutional platforms.

According to Ahmed (2011:65) “some opposition parties may choose to present alternative proposals to those of the government, while others choose to support it. Some conduct strict scrutiny of government actions, while other do not”. Even where the opposition lacks the power to block or prevent executive decisions from being effected, it still acts as a source of initiatives, raises issues for debate and ensures that the executive account for its policies. In ensuring that the opposition is recognised by the voters as alternative government, they make use of Parliamentary mechanisms of oversight such as committee inquiries, departmental budget reviews, plenary question time and debates. According to da Rocha, Jardim and Calderia (2009:6), “[of course] the provision of Parliamentary opposition to review may vary depending on other factors as the degree of competitiveness of the system and switching possibilities in the short and medium term, the degree of polarization between government and opposition, the level of popularity and government approval, the size [,] and level of cohesion of the opposition against the coalition”.

According to the IPU (1999:2), “Parliament is the institution that embodies society in the diversity of its composition and its opinions and which relays and channels this diversity in the political process. Its vocation is to regulate tensions and maintain equilibrium between the competing claims of diversity

and uniformity, individuality and collectivity, in order to enhance social cohesion and solidarity. Its role is to legislate, *inter alia*, by allocating financial resources, and oversee the action of the Executive”.

In conducting its oversight function, the opposition contributes in the promotion and protection of human rights and thus assisting in ensuring that democracy functions. Opposition party MPs must be able to denounce the irregularities they have noticed freely in Parliament or which were forwarded to them by their constituencies and bring suggestions on how to remedy the situation. Opposition parties bring success through effective and responsible opposition.

The Constitution (1996) does not mandate the opposition parties to conduct oversight and ensure accountability, but this is the responsibility of the parliamentary institution and all political parties represented in the assembly or council. The Constitution can be interpreted as calling all MPs to understand and appreciate the rationale and justification behind the constitutional oversight role of Parliament. According to Ahmed (2011:71), oversight and accountability must be considered as a key element of good governance and prevalence of constitutionalism and accountability, both by the ruling and opposition party.

Opposition parties during the fourth Parliament did not enjoy any extra ordinary or different mechanisms devised by the rules and procedures of Parliament compared to members of the majority party to exercise oversight over the executive. This is the case, while according to Ahmed (2011:71), “In most parliamentary forms of government, there are different mechanisms devised by the rules and procedure of parliament to assist the oppositions, strengthen the systems that the oppositions use to perform the oversight functions and table the issues for debate before the floor of the parliament. In many western parliaments such as UK, Germany and Canada, there is an ‘opposition’s day’, the day which is left and set aside by the oppositions to choose the issues for debate and table. However, the opposition do not use these opportunities for the tabling of issues for debate but simply spend the day by criticizing and divulging the government’s fault and maladministration”.

3.6 Summary and deductions

The description of the institutional and legislative context of oversight and accountability in South Africa reveals a desire to transform the society through ensuring that the executive is accountable to Parliament. The South African model of oversight and accountability highlights the constitutional provisions that refer directly and indirectly to oversight and accountability, and the legislative and policy framework. Parliament, assisted by the Constitution, employed certain “internal” and “external” mechanisms for conducting oversight and accountability in the Parliament of the Republic of South Africa. The potential risks associated with the “internal” mechanisms such as committees is according to Webb and Roberts (2014:4) “a weak mandate that may be subject to political whims, a lack of human rights expertise among the Members, Partisanship, compartmentalisation of human rights within a single-mandate committee, reduced political influence from a single-mandate committee where human rights are not prioritised in the Parliament, and perceived usurpation of the judicial role and resulting tension between the legislature and judicial branches”.

It has been discussed that the Money Bills Amendment Procedure and Related Matters Act 2009 gave the fourth Parliament powers and a mandate for Parliament to influence budgets of the executive thus being able to conduct fiscal oversight and influence social policy. This is realised when Parliament has the autonomy to assess whether expenditure is being used to meet the state’s development objective of South Africa. The Act further provides Parliament with the power to amend the fiscal framework, the division of revenue and tax policy. This power demands that the executive and government departments must defend their budget policies. Parliament has the power to amend these budgets if deficits or surplus are found to be problematic. The Constitution also establishes institutions, which play a major role in oversight and accountability, and at the same time ensures their independence from the executive power. It is evident that for oversight and accountability to

be achieved, the Chapter 9 institutions need to be effective. Mechanisms should be put in place to determine whether they are in fact effective. Each institution should ensure that it understands its goal(s) as mandated by the Constitution, which ensures its legitimacy, thus enabling the institution to meet the needs of its constituencies, which in this case are the people of the Republic of South Africa. Ensuring that oversight and accountability are implemented is not the sole role of the opposition political parties. Instead, it is an institutional responsibility, although the party system sometimes hinders the accomplishment of effective oversight and accountability. It is also important to note that oversight and accountability become institutional matters, as expertise on oversight and accountability among members of Parliament including the need for training, affect quality on how oversight and accountability are conducted. There should always be an emphasis on non-partisanship in the composition of the oversight institutions and an emphasis to strive for a high level of independence from the executive and a high degree of commitment to oversight and accountability by all members of Parliament.

Now that a discussion has taken place, on the institutional and legislative context of oversight and accountability in the South African context, the next chapter provides the research methodology applied in evaluating and assessing how the fourth Parliament of the Republic of South Africa understood its responsibility, role and mandate when it comes to oversight and accountability.

The next chapter through an evaluation analysis identifies strengths and gaps in the oversight and accountability mechanisms employed by the fourth Parliament. This objective is achieved by implementing a research design process that acts as a strategic framework for action or a procedure in unpacking and providing a solution to the research questions and thus enabling to achieve the final results of the study. The research approach or methodology in the collection of the data will also be discussed in the next chapter by exploring also data capturing and editing, data analysis and interpretation. The next chapter concludes by discussing the limitations of the study.

CHAPTER 4: RESEARCH DESIGN AND METHODOLOGY

4.1 Introduction

The study seeks to evaluate and assess the oversight and accountability mechanisms employed by the fourth Parliament of the Republic of South Africa. This Chapter, in particular, provides an in-depth description of the research design and methodology employed in order to evaluate the oversight and accountability activities of the fourth Parliament of the Republic of South Africa. A quantitative research method was employed by utilising a semi-structured questionnaires.

The chapter is structured into eight sub-categories:

- 1) Introduction,
- 2) Research design,
- 3) Research methodology,
- 4) Limitations of the study,
- 5) Summary and deductions.

4.2 Research Design

In order to explain the research design utilised to conduct the study, the hypothesis, conceptualisation and key variables will be discussed below, followed by issues of measurement and sample the sample design and methods followed will be explained.

4.2.1 Hypothesis, conceptualisation and key variables

The hypothesis of the study is that the oversight and accountability mechanisms employed by the fourth Parliament of the Republic of South Africa were ineffective, and that MPs did not understand their role, function, and mandate in overseeing the executive and thus holding the executive accountable for its actions and lack of action.

Bless and Higson-Smith (2002:156) indicates that the research design “is a set of procedures, which guide the researcher in the process of verifying a particular hypothesis and excluding all other possible hypotheses or explanations”. Therefore, it can be referred to as a blueprint to allow the researcher to test the validity of a hypothesis or to provide solution to the research questions, all the time being mindful of factors that might affect the relationship between the dependent and independent variables.

The study utilised an evaluation research design type, utilising quantitative methods to describe and evaluate the performance of oversight and accountability in the fourth Parliament. The evaluation research design focused

on the process of implementation. The advantages of the evaluation research design were that rapport and trust with the respondents was achieved, high validity of results was achieved and an insider perspective into the implementation of the oversight and accountability mechanisms were attained (Burger, 2014).

The study can be classified as being empirical, textual, numeric, hybrid and of medium control (Mouton, 2001:146). The study is empirical as the researcher does not know beforehand if the theory and hypothesis will be proven correctly, textual since information sourced will be from documentary sources, numeric in that the data from the semi-structured questionnaires will be quantified, hybrid since existing documented information and newly sourced data will be combined to present findings, recommendations and conclusions to the study.

A quantitative research design was utilised during the study to ensure accuracy, maximize objectivity and generalisability of findings, and ensure thoroughness. The researcher sought to play an objective role and ensure that involvement with the phenomena under study was limited to the demands of obtaining the necessary data. Furthermore, the researcher utilised semi-structured questionnaires with open-ended and closed-ended questions, which were computed and graphically analysed. The rationale for this research design was to plan and structure the research project in such a way that the eventual validity of the research findings could be maximised through either minimising or, where possible, eliminating potential error.

4.2.2 Issues of measurement

The nature of the research topic could have led to a high level of subjective inputs from individual responses. To counter this probability, certain questions in the semi-structured questionnaire were restricted by a rating system, e.g. very good, good, adequate, poor and very poor, and complemented by evaluative questions to extract opinions and proposals for addressing challenges. The semi-structured questionnaires can be found in Annexure 1

and Annexure 2. The semi-structured questionnaires did not obtain biographical details such as age and educational qualifications, typical behaviour, opinion, beliefs, convictions.

4.2.3 Sample design and methods

A probability sample in the form of a simple random sampling technique was used. From the total list of MPs (490 members) who were members of the fourth Parliament (400 NA members and 90 seats in the NCOP of which 54 were NCOP permanent delegates), a representative sample was drawn. According to Welman, Kruger & Mitchell (2007:55), in order for the results to be generalisable, the sample must be representative. Sampling means taking a portion or a smaller number of units of a population as representative or having particular characteristics of that population (De Vos et al. 2011:223). The sample is considered representative and thus allows generalisability, as the findings of the study, or what was observed in the sample, can also be observed in any other group of subjects from the same population.

The researcher assigned a random number to each of the 490 MPs and then used the random number sheet to select the representative sample, which is twenty percent of the total population (98 members were sampled as respondents) 70 completed questionnaires were received from the MPs. The same sampling methodology was used to draw a representative sample of the managers that dealt with oversight and accountability. Representativeness is the underlying epistemic criterion of a “valid”, i.e. unbiased, sample (Mouton, 2001:110). During the fourth Parliament 13 managers were responsible for issues related to oversight and accountability, four managers were sampled and all of them completed the questionnaire. Two questionnaires were administered to these respondents as some of the key questions spoke to their different roles and tasks as MP’s and Managers. It was important to carefully consider and administer two questionnaires in order that the results provide meaningful data.

4.3 Research Methodology

In order to systematically solve the research problem, a research methodology was followed that involved various steps in solving the research problem. Below the data collection methods utilised, data capturing and editing and data analysis and interpretation are discussed and explained in order to provide a step by step methodology followed during the research study.

4.3.1 Data collection methods

Research methodology refers to the methods of data collection. The methodology demands a thorough reflection on the planning, structuring and execution of the research for the sake of satisfying the desire for truth, objectivity and validity. The researcher's process of data collection included the sourcing of literature from documentary sources such as journal articles, Parliament internal documents, academic books, reports, newspapers and web references (Mouton, 2001:99). These document sources were the base of preparing the literature review discussed in chapter two and helped to secure a sense of what is oversight and accountability are and their application entailed nationally and universally.

Self-reporting (Mouton, 2001:99) in the form of a semi -structured questionnaire was employed. The semi-structured questionnaire was constructed and piloted before it was administered to the sample of respondents (Mouton, 2001:104). The aim of the pre-test was to identify questions that did not make sense so that they could be reviewed and improved. According to de Vos et al (2011:195), "in all cases it is essential that newly constructed questionnaires, those in their semi-final form, be thoroughly pilot tested before being utilised in the main investigation". Respondent's contact details were requested so that the researcher could follow up on questions or feedback that needs clarifying. An electronic survey in the form of semi-structured questionnaires was accordingly designed in order to collect primary data. The semi-structured questionnaires were constructed as a formal, written set of close-ended and

open-ended questions, aimed at every respondent in the study. The close-ended and open-ended questions enabled the respondents to express their views and opinions fully, thus allowing them to give precise and detailed information. The semi-structured questionnaires were piloted (Welman and Kruger, 2001:141) with fifteen MPs and the representative sample of the Managers that dealt with oversight and accountability during the fourth Parliament.

4.3.2 Data capturing and editing

The data that was collected was captured by converting the textual data into electronic format for capturing the written responses from the semi-structured questionnaires that were administered. The researcher took measures to minimize errors by record-keeping and kept an electronic backup of the completed questionnaires' responses as well as the questionnaire's themselves.

4.3.3 Data analysis and interpretation

Welman et al (2007:210) indicates that "data analysis is a paramount procedure in the research process". Data analysis seeks to provide feedback on the tenability or attainability of the originally formulated hypothesis and, consequently, on the theory, if deduced; is either provisionally refuted or confirmed. In the study statistical and interpretative methods of data analysis were employed. These assisted the researcher in determining the frequency of a particular experience or experiences against the responses provided.

The data analysis was done in such a way that it was practical and understandable. The quantitative data analysis was done to make sense of the numbers in order to permit meaningful interpretation. Quantitative data analysis involved the organising of the data collected, doing the calculations, interpreting the information. In the quantitative data analysis, content analysis was employed. This particular method of quantitative content analysis attempts to

characterize the meaning in a given body of discourse in a systematic and quantitative fashion (Franzosi, 2004:21). The unit of analysis was the fourth Parliament of the Republic of the South Africa. The interpretative method was used to summarise quantitative data. All the information was summarised, analysed, filtered and arranged in order to produce a research report that was scientifically logical and easy to comprehend.

4.4 Limitations of the study

One of the limitations of the study was the “social desirability effect” (Mouton, 2001:106) where the subject may portray a situation in a more positive or negative light given the personal perspective that may be the reality. The deductive approach (Mouton, 2001:117) was accordingly employed in the study. In terms of this approach, certain recommendations were made or conclusions were reached, based on the statements or views of various authors and respondents. The concepts that are critical to the study were identified and defined based mainly on the literature study. The definitions of certain relevant concepts are fixed, yet others such as the broad theme of oversight, accountability and democracy presented a number of different perspectives and thus varied definitions. The study was also conducted after the term of the fourth Parliament of the Republic of South Africa and thus certain members of the fourth Parliament who might be disgruntled for not being re-nominated for the 5th Parliament may have been subjective in their responses. The questionnaires results may reflect a measure of subjectivity given that each responded was responding from a professional and practical experience, which could have varied significantly in content, time and scope amongst respondents.

The study only focused on the national Parliament and not on all nine Provincial Legislatures and did not gain an overall view of the South African legislative sector.

4.5 Summary and deductions

The research aim and methodology to achieve this aim were discussed above. This study aims to be simplistic and clear while ensuring the accuracy of its results. The limitations of the study were not a major risk in that they would not have put a stop to the study. The research design and methodology used were elaborately discussed in this chapter. In addition, the set procedure in the form of the research design was chosen, which enabled the researcher to scientifically verify the hypothesis and thus being able to exclude all other hypotheses.

A quantitative research design was chosen and influenced by the desire to produce an accurate research outcome while being able to maximise objectivity. To counter subjective inputs from individual responses, a rating system complemented these by evaluative questions to extract opinion. The simple random sampling technique was utilised and the data collection included the sourcing of literature and responses from the semi-structured questionnaires. The data that was collected was captured by converting the textual data into electronic format. A quantitative data analysis was then employed to make sense of the numbers in order to permit meaningful interpretation. In the next chapter the findings are presented and analysed in order to make sense of the captured and edited data.

CHAPTER 5: THE STATE OF OVERSIGHT AND ACCOUNTABILITY IN THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA DURING THE FOURTH PARLIAMENT

5.1 Introduction

The concepts of oversight and accountability are universal and regarded as essential in the enhancing democracy in order to realise the dream of a better life for all citizens. The absence of effective oversight and accountability hinders the achievement of development goals and creates an atmosphere that easily accepts underperformance and corruption. According to Bapela (2010) “before 1994, accountability of government departments and public access to Parliament were as good as non-existent. From 1994 to 2004, Parliament’s focus was primarily on repealing and amending apartheid legislation, and a Parliament representing all ethnic groups instead of a white minority. In the third Parliament, from 2004, Parliament’s focus was drawn more to the institution’s other constitutionally mandated role of overseeing the executive (national and provincial cabinet ministers, their departments and organs of state). The current fourth Parliament, established in 2009, is meant to spend 60 percent of its time

on oversight-monitoring the performance of government and holding the latter answerable for how taxpayer's money is spent and to make government operations more transparent to the public".

The fourth Parliament vision was "To build an effective people's Parliament that is responsive to the needs of the people and that is driven by the ideal of realising a better quality of life for all the people of South Africa" (Parliament, 2010). One cannot help but be convinced that at the centre of this vision is a peoples' Parliament that is able to scrutinise and oversee the executive action, in order to improve the quality of life of all the people of South Africa, thus creating a better life for all.

In order to provide scientific evidence to test the hypothesis of the study that the oversight and accountability mechanisms employed by the fourth Parliament of the Republic of South Africa during its term were ineffective and weak, and that MPs did not understand their role, function and mandate in overseeing the executive and thus holding the executive accountable for its actions and lack of action, an investigation was conducted into the state of oversight and accountability during the fourth Parliament. Two semi-structured questionnaires (Annexure 1 & Annexure 2) were employed, covering a number of key oversight and accountability elements and key variables. The first questionnaire was administered electronically to members of Parliament who were also members of Parliament during the fourth Parliament in August 2015 and September 2015.

The second questionnaire was administered electronically to managers in Parliament who were also managers that dealt with oversight and accountability during the fourth Parliament in August 2015. Two separate groups of respondents were sort in order to investigate their areas of responsibility on oversight and accountability during the fourth Parliament. The data was captured and then a comparative format exercise was done to obtain a complete understanding of how the fourth Parliament dealt with oversight and accountability.

The basis for the findings on the various elements and variables of oversight and accountability were furnished by the data set, as conveyed in this chapter. It should be noted that the findings are structured in such a way that they cover the main operational, constitutional and strategic aspects relating to the constitutional mandate of oversight and accountability.

These aspects included:

- The Parliamentary mandate;
- Constitutional, legislative, policy and strategic framework;
- Institutional arrangements, systems and process;
- The Technology and systems to conduct oversight; and
- Monitoring and evaluation.

The Parliamentary mandate covers the question of when does the Parliamentary mandate begin and end. It also covers the Parliamentary programme and oversight function. The Parliamentary mandate further addresses issues of immunity and code of conduct.

The Constitutional, legislative, policy and strategic framework questions the oversight and accountability function. Under the topic of the Institutional arrangements, systems and process, the institutional arrangements, i.e. structure, systems, processes and resources, including executive compliance, are questioned. Under the topic of the technology and systems to conduct oversight, the development of the budget vote tool is explored. The last section seeks to understand the issues of monitoring and evaluation of oversight and accountability mechanisms employed by the fourth Parliament.

The research hypothesis is supported by clear scientific evidence through the diagnoses of a number challenges and a trend of weaknesses' pertaining to the fourth Parliament execution of oversight and accountability in the Parliament of the Republic of South Africa.

5.2 Fourth Parliament Approach on Oversight and Accountability - Findings and Analysis

The Parliamentary mandate; constitutional, legislative, policy, and strategic framework; institutional arrangements, systems and process; technology and systems to conduct oversight, implementation activities (practices); and monitoring and evaluation are the key main strategic, legislative, institutional and operational aspects relating to the function and responsibility of Parliamentary oversight and executive accountability that were utilised as the basis for the findings.

5.2.1 Parliamentary Mandate

The Parliamentary mandate is covered by questioning the beginning and end of the Parliamentary mandate; Parliamentary programme and oversight function and immunity and code of conduct.

5.2.1.1 Beginning and end of Parliamentary mandate

Findings

Responding to the question about the beginning of the Parliamentary mandate of the fourth Parliament, eighty percent of respondents (members) indicated that once they were sworn in as members of the fourth Parliament, their mandate commenced. Sixty percent responded by indicating that the outgoing members' mandate ended on the day of the new elections (on the eve of elections) with five percent indicating that the outgoing members' mandate ended on the first seating of the chamber (first seating of the new members). Thirty five percent in turn believed the mandate of the outgoing members end after new member's mandates are validated.

Seventy five percent of the managers indicated that the primary responsibility for ensuring that oversight and accountability takes place in the legislative process was with the institution of Parliament. Twenty percent believed that it lays with the members of Parliament individually and five percent indicated that the political parties had the primary responsibility.

The responses to the question on whether Parliament did have a budget for oversight and accountability indicated that there was a budget and that the budget was appropriated as follows:

Table 5.1: Parliament budget for oversight and accountability from 2009 - 2014

Programme	2013/14	2012/13	2011/12	2010/11	2009/10
Legislation & Oversight	R347,450	R315,892	R298,000	R300,068	R202,009

Analysis

From the findings, an analysis can be drawn that high level of understanding and respect for the constitutional mandate for members of the fourth Parliament was in place and supported democratic principles such as freedom of speech by providing members of the fourth Parliament with immunity from prosecution or detention while in the chamber. The existence of a budget created means that could capacitate the practical realisation and achievement of the constitutional imperative through financial resourcing of the activities and functions of oversight and executive accountability. Table 5.1 indicates a substantial increase in funds made available for oversight but less compared to the amounts allocated for passing legislation. Genuine oversight can be realised once a three way commitment is achieved from the members of Parliament, “willingness” on the part of the executive and a skilled, committed administrative support that is able to draft a budget that is adequate for effective oversight.

According to William (2014:14) such “willingness” on the part of the executive is the first problem. A few examples in the Fourth Parliament come to mind. The

(then) Chief Whip of the ANC asserted in March 2010 that the ruling party gave uncompromising support to the concept of the executive accountability to all parliamentary committees “including SCOPA”, yet later accused SCOPA (after the Minister of Defence was called to appear before it, precisely because departmental officials were not providing answers) of wanting to “parade and embarrass ministers”, whose primary responsibilities were to “run the country” rather than subject themselves to oversight”. William (2014:14) further indicated that the Speaker ended up reprimanding that committee and the committee chairperson was soon dismissed. The challenge then is that even though great resources are put in place and the constitutional mandate is articulated, without the political “willingness” then, the whole exercise is subject to substandard results or finds itself undermined on all levels. Political “willingness” must be portrayed equally by the MPs and the executive. The challenge in South Africa is to find that political “willingness” that will ensure that political and administrative individual commitment and by-in which will in turn will strengthen the democratic character of our country (Scott, 2009:63).

5.2.1.2 **Parliamentary programme and oversight function**

Findings

All respondents that dealt with oversight and accountability during the fourth Parliament responded by indicating that Parliament did have a Parliamentary programme that encouraged oversight and accountability. Seventy five percent of the managers responded that the Parliamentary programme did not align itself with the established fixed time frames for certain processes of the Money Bills Amendment Procedure and Related Matters Act. Twenty- five percent said there was an alignment between the Parliamentary programme and established fixed time frames of certain processes of the Money Bills Amendment Procedure and Related Matters Act.

Analysis

All respondents indicated that the programme of the fourth Parliament encouraged oversight and accountability as another indicator of the high value

placed on this constitutional imperative, but seventy- five percent indicated it did not align with the established fixed time frames for certain processes of the Money Bills Amendment Procedure and Related Matters Act. The constitutional imperative of oversight and accountability is a core function of Parliament that has been overshadowed by emphasis on law-making during the first, second and third Parliaments.

In support of the above, William (2014:1) states that “the main focus of the First and Second Parliament was to change apartheid legacy through the passing of hundreds of laws at rapid pace”. The third Parliament had then to ensure the start of implementation of the laws passed. The fourth Parliament emphasised the implementation of the laws through strengthening the oversight function (William, 2014:2).

5.2.1.3 Immunity and code of conduct

Findings

All responses to the question about immunity and code of conduct indicated that Parliamentarians enjoyed immunity from prosecution or detention while in the chamber. The responses further indicated that a code of conduct was in place during the fourth Parliament for Members of Parliament, which also applied to members of the executive who had no separate code of conduct.

Analysis

Even though members of the fourth Parliament enjoyed immunity from prosecution and detention while in the chamber, all respondents indicated that a code of conduct applied to MPs as much as to the members of the executive. This environment was conducive to a strong commitment to execute the constitutional imperatives of overseeing the executive and holding it accountable to Parliament.

5.2.2 Constitutional, legislative, policy and strategic framework

The constitutional, legislative, policy and strategic framework are addressed below under oversight and accountability function; legislative, policy and strategic framework.

5.2.2.1 Oversight and accountability function

Findings

All respondents (MPs) indicated that the function of oversight and accountability was important to the fourth Parliament. The respondents indicated that the fourth Parliament based its oversight and accountability function on its constitutional mandate. All respondents (MPs) stated that Parliament had powers to summon senior government officials, members of the executive and Chapter 9 institutions. All respondents indicated that Parliament did not have powers to approve key executive appointments. Forty-two percent of respondents (MPs) indicated that the primary responsibility for ensuring that oversight and accountability take place in the legislative process was that of individual members of Parliament. Twenty-three percent indicated that the responsibility lays with political parties, fifteen percent chose the Presiding Officers as primary responsible, and twenty percent indicated that the mixture of them all, including Parliament administration, had the primary responsibility.

All respondents stated that the elements of the Parliament oversight and accountability programme included hearings in committees, oral and written questions to the executive, budgetary oversight, and debates on departmental reports. Responding on the number of questions to the executive, the respondents (MPs) stated that during the fourth Parliament the questions to the executive were as follows:

Table 5.2: Number of Questions to the executive during the fourth Parliament.

Number of Questions to the executive during the fourth Parliament 2009-2014							
		2009	2010	2011	2012	2013	2014
Oral Questions	NA	280	281	355	472	338	38
	NCOP	84	80	111	159	201	39

Oral Replies	NA	258	NSR	NSR	472	NSR	NSR
	NCOP	84	80	111	157	201	39
Written Questions	NA	2361	3573	3870	3439	3207	382
	NCOP	199	521	682	686	458	55
Written Replies	NA	2261	NSR	NSR	NSR	NSR	NSR
	NCOP	179	486	636	674	451	48

Key: NSR=No statistical records available

Sixty-eight percent of respondents (MPs) stated that the Parliamentary programme did not align itself with the established fixed time-frames for certain processes of the Money Bills Amendment Procedure and Related Matters Act, e.g. Medium Term Budget Policy Statement (MTBPS), the processing of the Division of Revenue Bill (DoRB) and the Main Appropriation Bill. While thirty-two percent said there was an alignment by the programme to fixed time-frames for certain processes of the Money Bills Amendment Procedure and Related Matters Act. All respondents indicated that the programme of Parliament and that of the executive were not aligned with each other where possible. Sixty-eight percent of respondents indicated that the programme of committees was not drafted in such a way as to accommodate the provisions of the Money Bills Amendment Procedure and Related Matters Act. While thirty-two percent indicated that the programme of committees was drafted in such a way as to accommodate the provisions of the Money Bills Amendment Procedure and Related Matters Act.

All respondents stated that the programme of Parliament Houses (NA&NCOP) did not create more time for consideration of committee reports as well as private Member's business (e.g. motions). Other programme alignment matters raised by a minority of respondents included that the programme of Parliament did not provide adequate time for constituency work to allow sharper focus on oversight matters, through an expanded public participation in Parliamentary activities.

Analysis

The lack of certainty and clear understanding of responsibilities, including functions, could be identified in that MPs did not understand exactly where the primary responsibility for ensuring that oversight and accountability take place lied. It was further shocking that no statistical records were available on the number of oral replies in the NA from 2010, 2011, 2013 and 2014. No statistical records were available for the number of written replies from 2010 until 2014 in the NA.

In analysing the findings, the weak coordination and alignment of the Parliamentary programme with established fixed time-frames for certain processes of the Money Bills Amendment Procedure and Related Matters Act was identified. The programme of the houses (NA&NCOP), that of the committees, and the alignment of the programme of Parliament and that of the executive where possible need attention.

5.2.2.2 Legislative, policy and strategic framework

Findings

All respondents indicated that even though oversight and accountability were an integral aspect of Parliament's strategic plan, no policy existed relating to oversight and accountability and also no long-term oversight and accountability strategy and implementation plan existed in the fourth Parliament. All respondent's indicated that the fourth Parliament did not compile an annual business plan for oversight and accountability linked with specific implementation activities.

Analysis

The Constitutional provisions that are referred to directly and indirectly, as discussed and tabled under 3.2.1 in chapter 3 when discussing the South African model of oversight and accountability, are clear on what is expected. They clearly indicate the responsibilities and the requirement for a strong platform for Parliament to execute its constitutional mandate of oversight and accountability.

All thirty-one constitutional provisions do not clearly indicate and define the framework and there are even restrictions on conducting oversight and accountability. It becomes the responsibility of Parliament to provide or develop the guiding principles and direction that should be the foundation and driving force in executing its constitutional mandate of oversight and accountability. The best approach would be to develop an oversight and accountability policy and strategy.

The policy document should be responsible for giving a principle approach that should be adopted on the constitutional imperative and further provide a detailed direction with unambiguous terms that are legally sound and binding to those that are expected to play a role in executing their oversight and accountability function. In analysing the findings one can see that the fourth Parliament lacked such a guiding policy on oversight and accountability that would have been a provider of a focused direction.

Even though the number one strategic objection of the fourth Parliament was to build a quality process of scrutinising and overseeing government action, making oversight and accountability an integral aspect of Parliament's strategic plan, no long-term oversight and accountability strategy and implementation plan existed in the fourth Parliament.

The lack of an oversight and a strategic framework particularly focusing on oversight and accountability meant a lack of a focused strategic vision and a clear mission for executing oversight and accountability. The lack of policy creates an environment where there is a lack of certainty and knowledge about what the basic expected outcomes are when conducting oversight and ensuring accountability by the executive. The constitutional mandate might be clear, but minimum standards should be clearly reflected in a strategic framework and the informing policy on oversight and accountability.

Defining the constitutional mandate in clearly defined policy objectives that are encompassed in a specific oversight and accountability policy and strategy also ensures or to a certain extent minimises the above-mentioned technical misalignments that have a negative effect on attaining the constitutional mandate of oversight and accountability.

5.2.3 Institutional arrangements, systems and process

The institutional arrangements, systems and process were investigated through evaluating the institutional arrangements – structure; institutional arrangements – processes; systems, processes and resources; and executive compliance. These aspects are discussed below in order to provide a better understanding of the employed institutional arrangements, systems and process.

5.2.3.1 Institutional arrangements – structure

Findings

Since the fourth Parliament operated in a political environment, ultimate political responsibility for oversight and accountability during the fourth Parliament needed to be vested in some office in order to ensure that internal processes are followed. In responding to the question on who took ultimate political responsibility for oversight and accountability during the fourth Parliament, four percent of the responded managers indicated that the Presiding Officers (Speaker of the NA and Chairperson of the NCOP) took the ultimate responsibility. Five percent indicated that the various committee chairpersons took the ultimate responsibility, sixty-six percent who choose “other” mention Parliament, and twenty-five percent indicated that the political parties took the ultimate political responsibility.

Seventy percent when asked in which office the programme on oversight and accountability is located indicated that it was located in the houses or chambers of Parliament. However, ten percent responded that the office of the Speaker. Another ten percent responded that it was in the office of the Chairperson, and

yet another ten percent indicated that they did not know where the programme on oversight and accountability was located.

All managers unanimously responded that there was a political structure in place to deal with oversight and accountability matters. Forty-five percent of the managers indicated that the political structure was the Chief Whips Forum where political consensus is sought on issues, e.g. the programme of the house. Fifty-five percent responded by indicating that the committees were the political structure in place during the fourth Parliament that had to deal with oversight and accountability implementation. The role of the structure, as indicated by managers, included providing political leadership and direction and seeking the attention of the Speaker of the NA and Chairperson of the NCOP on matters that needed to be discussed and clarified with the executive on oversight and accountability.

All respondents who were managers indicated that there was no specific administrative unit in place to carry out oversight and accountability implementation plans and provide delegated support to the Chief Whips Forum and committees in terms of oversight and accountability matters (as indicated by the oversight model). When responding where the role of this unit in terms of oversight and accountability is placed (as indicated by the oversight model), all managers indicated that the role is placed in various divisions within Parliament e.g. Committees, NA, NCOP, legal and the budget office. Some of the roles are performed within Parliament houses and others at Parliamentary administrative level, which is the sole responsibility of the Secretary to Parliament. The roles that were under the houses included questions unit in both houses, statements unit in both houses, table unit in both houses, and then Committees, research and budget office falling under administration.

When asked if special training in the following areas were provided, respondents confirmed that they were trained on:

- Oversight and accountability or relevant areas such as legislation and oversight, Committees, legislation and proceedings, parliamentary questions;
- Research;
- Procedural services;
- Money bills amendment procedure and related matters and budget and provincial and municipal governance; and
- Mechanism to deal with delegated legislation.

All respondents who were managers indicated that since the absence of an oversight unit, the different portfolio committees and select committees dealt with oversight and accountability separately and so did the two houses of Parliament (NA & NCOP). The committees also then dealt with matters referred to them from the houses of Parliament differently.

Twenty-seven percent of respondents (managers) indicated that the structure (political and administrative) was working well for effective oversight and accountability, while seventy-seven percent indicated that the structure (political and administrative) was not working well for effective oversight and accountability. All those who indicated that the structure did not work well for effective oversight and accountability did not indicate what structural changes they suggested for greater effectiveness even though asked to do so. It should be noted that the MPs were not asked to respond on the institutional arrangements on structure as these are mainly done at the administrative level.

Analysis

That sixty-six percent indicated that the political parties took the ultimate political responsibility for oversight and accountability during the fourth Parliament was a surprise, as political parties in a parliamentary environment cannot be expected to champion the responsible for providing a political direction and commitment to oversight and accountability but rather the institution through its members supported by the administration. It could perhaps occur from the opposition benches but certainly not from the ruling party. The

reason for this conclusion is that it is not in the ruling party's interest to embarrass their colleagues by exposing their weaknesses with regard to how they govern. It was also disconcerting that only four percent of the respondents (MPs) indicated that the Presiding Officers took the ultimate responsibility, as one would have expected them to be the political champions that gave political direction and commitment on oversight and accountability, as they are the leaders in the institution and high ranking figures in their own party structures.

The Constitution does not require a political structure to be put in place to deal with oversight and accountability matters in Parliament. However, at the same time, a political structure could assist by ensuring that a high level of adherence to oversight and accountability initiatives. This could be achieved by ensuring that the structure creates a platform where political interaction among senior members of Parliament takes place. Structures such as the Chief Whips Forum are not adequate, as they only focus on matters that talks to the NA and not the NCOP, which has only one Chief Whip responsible for the whole NCOP house and not for a certain political party. Furthermore, the Chief Whips Forum is mainly occupied with dealing with the programme of the house before it is presented to the programming committee and also issues around members' behaviour in the house sittings.

The location of the oversight and accountability office is of major importance. The majority of respondents at seventy percent indicated that the programme on oversight and accountability was located in the houses or chambers of Parliament during the fourth Parliament. What is of concern is that the staff in the houses should have been focussing on matters related to procedures during the house sittings. The reason could be that this arrangement provides the Speaker of the NA and the Chairperson of the NCOP the opportunity to take ultimate political responsibility for oversight and accountability, thus enabling them to interact optimally with the executive.

What is of concern is the lack of a specific administrative oversight and accountability unit to carry out oversight and accountability implementation

plans and providing delegated support to the houses of Parliament, Chief Whips Forum and Committees. During the fourth Parliament, the oversight roles were scattered all over the institution. It makes it difficult for the Speaker of the NA and the Chairperson of the NCOP to take political responsibility for oversight and accountability. Since the secretary to Parliament is accountable to the Presiding Officers (Speaker of the NA & Chairperson of the NCOP acting jointly) for implementation and daily operations of Parliament strategy and performance, all structures responsible for oversight and accountability could report directly and indirectly to the Secretary, and thus removing the administrative implementation burden on the Speaker of the NA & Chairperson of the NCOP. The arrangement could then ensure that administration of oversight and accountability methods are removed from the uncertainty and instability associated with the nature of politically based offices of the Presiding Officers.

Even though the political structure and administrative structure work closely to enhance the implementation of oversight and accountability, but for the interest of smooth operations, it becomes important that the lines of responsibility and parameters of decision-making to be clearly demarcated. This would allow Parliament to avoid the fourth Parliament situation where some of the responsibilities were seating in the administrative structure even though they had political implications e.g. budget office.

The lack of standardisation with regard to the structure and function of oversight is evident through the manager's responses that since the absence of an oversight unit, the different portfolio committees and select committees dealt with oversight and accountability separately and so did the two houses of Parliament. The structure (political and administrative) was considered by seventy percent of managers as not working well for effective oversight and accountability.

5.2.3.2 Institutional arrangements – processes

Findings

The questions were posed to elicit “Yes” or “No” answers about how members of the fourth Parliament understood and dealt with institutional arrangements on processes implemented to ensure effective oversight and accountability. All respondents (MPs) indicated that no sub-project was developed to pursue the review of the Reserve Bank Act for purposes of aligning the Act with the Constitution in order for Parliament to exercise oversight over the bank. All respondents indicated that no operational plan existed that outlined the processes and resources required for conducting oversight and seventy-five percent indicated that there was no adequate support to members of Parliament to enable them to perform their mandates. Twenty-five percent in turn said there was adequate institutional support.

All respondents indicated that the fourth Parliament did develop guidelines for the interaction and engagement of members of Parliament with ministers on issues of public concern. All respondents indicated that the fourth Parliament did not consider traditional South African mediums such as Lekgotla, Bosberaad and Imbizo for deliberation, debates and engagement on broader and complex issues, so as to fulfil its oversight function over the executive. Fifteen percent of MPs that responded indicated that the procedure followed during the fourth Parliament on processing of reports from sectoral Parliaments included debating them in the house and also referring them to committees. Seventy-five percent of respondents said there was no procedure during the fourth Parliament for the processing of reports from sectoral Parliaments.

All responses by MPs indicated that the sectoral Parliaments were not recognised by the rules of Parliament. Furthermore, all responses indicated that the rules of the respective houses of Parliament did not provide the executive report on negotiations, prior to signing of international agreements that require approval of the houses. Further questions on institutional arranged processes included whether the fourth Parliament had mechanisms in place to oversee compliance with international agreements and all respondents indicated “No”. All respondents indicated that the general petitions, representations and

submissions as specified in section 56 and 69 of the Constitution were not adequately addressed through institutionalised mechanisms.

Analysis

Although section 224(2) of the Constitution provides that the Reserve Bank of South Africa must perform its functions “independently and without fear, favour or prejudice, but in terms of section 55 and 69, it must be able to report to Parliament on the implementation of monetary policy and submit audited financial statements including the audit report on those statements to Parliament. During the fourth Parliament the Reserve Bank was still not accountable to Parliament. The oversight of the Reserve Bank, as prescribed by the South African Reserve Bank Act (Act No.90 of 1989), requires that the Minister of Finance ensures compliance with the Act by giving notice of non-compliance to the board of directors of the Reserve Bank and require compliance within a specific period. The only other remedy for the Minister of Finance is to apply to the High Court to compel compliance. This undermines section 55(a) and 69(b) of the Constitution, which states that Parliament has power to summon any person to appear before it, which includes the Governor of the Reserve Bank of South Africa.

The lack of an operational plan that outlined the processes and resources required for conducting oversight is alarming, as this might have a potential of hindering effective exercise of oversight on the executive actions by Parliament due to lack of clear process flow and direction of resources when conducting oversight. It is thus not surprising that seventy-five percent of MPs indicated that there was not adequate institutional support to members of Parliament provided to enable them to perform their mandate to oversee the executive.

The Constitution of the Republic of South Africa bestows on Parliament the responsibility to exercise oversight over the executive and to hold the executive to account. The guidelines for interaction and engagement of members of Parliament with Ministers on issues of public concern include the power to scrutinise and oversee executive actions by obtaining regular reports from

Ministers. According to section 56 of the Constitution of the Republic of South Africa “the National Assembly or any of its Committees may:

- (a) Summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;
- (b) Require any person or institution to report to it;
- (c) Compel, in terms of the national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and
- (d) Receive petitions, representations or submissions from any interested persons or institutions”.

That seventy five percent of respondents indicated that there was no procedure during the fourth Parliament on processing of reports from sectoral Parliaments, is an indication as previously indicated that the fourth Parliament did not consider traditional South African mediums such as Lekgotla, Bosberaad and Imbizo for deliberations, debates and engagement on broader and complex issues in order to fulfil its oversight function over the executive. If provisions were made for their procedure, it would have assisted in the formalisation of recommendations to be submitted to the relevant committees or house of Parliament for consideration.

The respondents indicated that the rules of the respective houses of Parliament did not, provide for the executive to report on negotiations prior to signing international agreements that require approval of the Houses. All respondents further indicated that there were no mechanisms in place to check compliance with internal agreements. In terms of section 231 of the Constitution of the Republic of South Africa:

- (a) Negotiation and signing of international agreements are the prerogative of the national executive;
- (b) Parliament has the power to approve or not approve international agreements forwarded by the national executive;

- (c) Subject to the concurrence of the national executive, Parliament may approve an international agreement with reservation;
 - (d) Parliament can request or insist that the national executive include a reservation in respect of an international agreement or refer an agreement back to the Executive;
 - (e) Parliament has the ultimate power to approve an international agreement.
- From the above-mentioned, it becomes evident that a mechanism should have been established to ensure that Parliament could engage with stakeholders involved in the negotiation team and further put mechanisms in place to oversee compliance with international agreements.

According to section 56 and 69 of the Constitution of the Republic of South Africa, Parliament or its committee are required to accept petitions, representations or submissions from any interested persons or institutions. The mechanism would have facilitated the processing, referral and guidance on attending to petitions, representations and submissions. According to the respondents, this Constitutional demand was not adequately addressed through institutionalised mechanisms.

5.2.3.3 Systems, processes and resources

Findings

All managers responded by indicating that in terms of systems, processes and resources, Parliament did not have electronic (software) or manual systems in place for oversight and accountability. There was no database management system, project management and planning system, tracking system e.g. resolution tracking system, monitoring and evaluation system and also no communication system on oversight and accountability.

All managers responded by indicated that a standard process was in place pertaining to each Committee (NA and NCOP) to conduct oversight and accountability. When further asked to describe the process for committee to conduct oversight and ensure accountability, the respondents indicated that a

guideline on accountability cycle priorities explained the typical committee process that should be followed in conducting oversight and accountability.

Analysis

The fourth Parliament did not have in place a standard management process specifically focusing on the planning and execution of oversight and accountability. The findings indicate that during the fourth Parliament there was no database management system, either manual or electronic, no project management and planning in place for oversight and accountability. The lack of project management and planning could be linked to the non-existence of tracking, monitoring and evaluations systems. The responses from the managers indicated that there was a lack of communication systems by the fourth Parliament on matters concerning oversight and accountability. The fourth Parliament could have invested more on its television and radio programmes, i.e. broadcasting matters that relate to oversight and accountability as much as it does to issues that relate to public participation and law making.

The standards process in place to each committee (NA and NCOP) to conduct oversight and accountability spoke to guidelines and steps in the accountability cycle, but it was not revealed if all committees adhered to these processes when conducting oversight. The guidelines and steps of the processes were generic and could be adapted to reflect the specific needs and situation of committees.

5.2.3.4 Executive compliance

Findings

All Members responded by indicating that no rules of Parliament were put in place during the fourth Parliament to assist in sanctioning members of the executive for non-compliance after all established existing avenues and

protocols have been exhausted. When asked what mechanisms were in place to ensure that there was reporting on responses by the executive on resolutions adopted by the fourth Parliament, sixty six percent of respondents indicated that it was the NA rule 117, NA rule 115(3) and NCOP rule 249. Twenty-four percent indicated that there were no mechanisms and ten percent said they did not know.

On the question as to whether the fourth Parliament employed a tracking and monitoring mechanism with regard to the executive's compliance as part of its continuous oversight function, all respondent's indicated that there was no such mechanism. When asked if a Joint Parliamentary Oversight and Governance Assurance Committee was appointed to consider and report on all assurances, commitments and undertakings given by members of the executive in either houses or committees of a house, the response by all respondents was that no such committee was appointed.

Eighty-four percent of respondents, when asked if they think that in order to enforce compliance with question for written reply, the review of NA rule 117 and NCOP rule 249 would have been necessary to change the period for responding in writing by the executive from ten days, indicated that the change would not had been necessary to enforce compliance. Sixteen percent responded that it would have been necessary. When requested to explain their view, the explanation from the eighty- four percent was that even though NA rule 115(3) provides that a question for written reply may not stand over more than once when such instances exists, there are no sanctions against the executive in this regard. The sixteen percent indicated that it was necessary in order to extend time frame for the executive to respond to a question for written reply.

Sixty-three percent of respondents when asked if the rules of Parliament allowed for joint reporting by committees on transversal matters and the house to adopt such cluster reporting indicated that only NA rules allow for such joint reporting. Thirteen percent indicated that no such rules existed during the fourth

Parliament. Twenty-four percent indicated that NCOP rules do not allow for such cluster reporting while NA rules do allow.

All respondents indicated that they think joint reporting by committees on transversal matters would have benefited Parliament in that committees would be able to avoid a situation where two or more committees go and conduct oversight visit in the same area and on the same matters of concern and then come back to Parliament and produce different reports.

Analysis

From the findings it is evident that no rules were in place during the fourth Parliament to assist the institution further in sanctioning members of the executive for non-compliance, when all established existing avenues and protocols have been exhausted. The responses indicate that the fourth Parliament had no procedure for executive compliance.

NA rule 117 and NCOP rule 249 only provide that should the responsible executive member fail to provide an executive reply to a question for written reply, upon request of the member of Parliament in whose name the question was submitted, the question stands and can now be put to the executive member in the house for oral reply on the relevant question day. A problem arises when a question stands over more than once as these rules are silent in that regard.

Oversight and ensuring accountability becomes difficult if not impossible where there are no clear mechanisms in place to ensure that there is reporting on responses by the executive on resolutions adopted by the fourth Parliament. Furthermore, the situation becomes more difficult if mechanisms for tracking and monitoring do not exist. The Joint Parliamentary Oversight and Governance Assurance Committee would have assisted in this case to implement effective measures to ensure compliance by the executive in circumstances where all existing avenues of eliciting a response from the executive have been exhausted, especially when it relates to responses

required on resolutions adopted by the fourth Parliament and responses to questions for written reply's.

The lack of rules to allow joint reporting by committees on transversal matters and the lack of rules on the house to adopt such cluster reports were signs of weakness, as Parliament failed to joint resources and expertise from different cluster committees in fulfilling its mandate of exercising oversight over the executive.

5.2.4 Technology and systems to conduct oversight

In order to evaluate the technology and systems to conduct oversight during the fourth Parliament, an evaluation of the budget tool implemented was conducted and below is the findings and analysis. The analysis of the budget tool and its development is important to enhance the oversight work of committees in dealing with the departmental budgets presented before the committees.

5.2.4.1 Development of budget vote tool

Findings

Seventy percent of members of Parliament that responded indicated that no budget tool existed to assist members of Parliament in carrying out their oversight function. Eight percent indicated that a budget tool existed and twenty- two percent did not provide an answer. Eight percent of the respondents indicated that the budget tool considered the implications of developments around budget oversight work, emanating from the passing of Money Bills Amendment Procedure and Related Matters Act. Among issues raised when asked to explain were the scrutiny of the fiscal framework and the actual amendment of money bills, including the budget.

All respondents did not answer on how the budget tool embraced the values and principles by which Parliament conducts oversight, e.g. transparency and

accountability. When the question about whether the fourth Parliament put in place an information and technology (IT) system for purposes of budget oversight, seventy percent responded by indicating that the fourth Parliament did not put in place an IT system for the purposes of budget oversight, Eight percent said the fourth Parliament did put an IT system in place, while twenty-two percent did not provide an answer.

All respondents indicated that a budget tool is necessary to detect and prevent poor financial planning and mismanagement of public funds, as well as improve accountability of government and public agencies. When asked to explain if they believe that a budget tool would assist in detecting waste within the machinery of government and public agencies in order to enable Parliament to improve the efficiency, economy and effectiveness of government operations, all respondents indicated that the budget tool would assist by detecting and preventing poor financial planning and mismanagement of public funds and improve accountability of the government and public agencies. They also indicated that the budget tool ensure delivery on government policies and priorities through Parliament budget oversight.

All respondents indicated that they believe that a budget tool can assist Parliament to coordinate its activities effectively and deliver on its mandate, particularly on its new and extended role in the budget process. All respondents indicated that the fourth Parliament did not create a budget information matrix for departments to assist in serving as an induction manual containing as much information as possible about a department for new members joining a Parliamentary committee.

All respondents indicated that the fourth Parliament did not reposition its oversight mechanisms to align them with the new extended role of Parliament in the budget process. Furthermore, all respondents stated that systems were not in place to create appropriate links with the executive, South African Revenue Services, South African Reserve Bank and other relevant organisations.

Analysis

It is alarming that seventy percent of respondents indicated that no budget tool existed and only eight percent acknowledged an existence of a budget tool while twenty percent did not answer. Even if a budget tool existed, seventy percent definitely did not utilise the budget tool. That only eight percent of the respondents confirmed its existence means that it was not a popularly utilised tool. In April 2009, Parliament passed the Money Bills Amendment Procedure and Related Matters Act, No.9 of 2009 to ensure Parliament is able to exercise its constitutional function of amending money bills. The role of Parliament after the passing of the act includes the scrutiny of the fiscal framework and the actual amendment of money bills, including the budget. This goes beyond authorising revenues and expenditures, including monitoring the implementation of the national budget.

A budget tool would then assist members of Parliament in carrying out their oversight function by ensuring that, for instance, that the budget data including changes in the budget vote allocation is made available to members of Parliament. The budget tool would assist members of Parliament to get simplified information to assist new members of Parliament in conducting their oversight function. The budget tool would assist in detecting waste within the machinery of government and public agencies in order to enable Parliament to improve the efficiency, economy and effectiveness of government operations. The establishment of the Budget Office is a constitutional function of amending money bills. The new extended role of Parliament in the budget process i.e. scrutiny of fiscal framework and the actual amendment of money bills, including the budget, necessitated that the fourth Parliament reposition its oversight mechanisms for this extended role. One of the weaknesses of the fourth Parliament budgetary oversight function relates to lack of systems to create appropriate links with the executive, South African Revenue Services, South African Reserve Bank and other relevant organisations.

5.2.5 Implementation activities (Practices)

The oversight and accountability implementation activities (practices) to be discussed below include mechanisms such as the plenary debates which can take the form of questions to the executive, motions without notice, notices of motion, budget votes, member's statements and statements by cabinet members. Other mechanisms to be discussed below include petitions; approval of annual budget and strategic plans; committee's role in Parliamentary oversight; fiscal oversight; chapter 9 institutions role; and the role of opposition on oversight.

5.2.5.1 Plenary debates

The plenary debates as indicated under 3.2.3.1 in chapter three are a major mechanism through which the concerns of MPs constituents regarding specific government programmes and legislation, including improvements on service delivery, can be brought to the attention of the executive through plenary debates (Parliament, 2009:33). The following methods were employed during the fourth Parliament debates, questions to the executive, motions without notice, notice of motion, budget votes, members' statements and statements by the cabinet members.

Findings

Sixty-four percent of respondents claimed that the task of controlling a debate in the house was left to the Presiding Officer, six percent indicated that this was sometimes the case, twenty-percent choose most of the time, while ten percent choose "other". When asked to specify, they indicated that the task of controlling a debate in the house was left to the Chief Whips of political parties and each political party leader in the house.

Sixty-three percent of respondents believed that during the fourth Parliament, subjects of immediate importance were debated in time, with thirty-seven percent saying the fourth Parliament did not debate subjects of immediate importance in time. Thirty-two percent of respondents indicated that the programme of Parliament allowed enough time for debates, while sixty-eight percent said it did not allow enough time. Six percent indicated that the smaller parties were allocated adequate time during debates and an overwhelming ninety-four percent confirmed that smaller parties were not allocated adequate time during debates.

When the respondents were requested to rate the standard of debate during the fourth Parliament, the responses were as follows: very good – forty-two percent; good – six percent; adequate – two percent; poor – fifty percent; and very poor –zero percent.

Analysis

It is evident from the above findings that the fourth Parliament, while it did not debate every matter of popularity immediately in the public media, a number of subjects of immediate importance were debated. The importance of having the Presiding Officer controlling such debates was also not left behind, as indicated by sixty-four percent of respondents.

What is concerning is the claim by the respondents that the programme of Parliament did not allow enough time for debates, as claimed by sixty-eight percent of respondents. Furthermore, it is alarming that the claim by an overwhelming ninety-four percent that during the fourth Parliament smaller parties were not allocated adequate time during debates. When analysing the findings, one wonders how the smaller parties were expected to make meaningful contribution during the debates. Fifty percent of respondents indicated that the standard of debates during the fourth Parliament was poor and forty-two claimed that it was very good.

Debates that were of national importance and highly covered by the media included the use of the South African Air Force base Waterkloof by the Gupta family, relevance of the National Key Points Act in a democratic South Africa and the centenary of the 1913 Natives Land Act.

5.2.5.1.1 Questions to the executive

Findings

A convincing eight-four percent of respondents were of the opinion that the standard of questions and replies during the fourth Parliament were poor. However, eight percent indicated that the standard was good, two percent said it was very good, and six percent indicated that the standard was adequate.

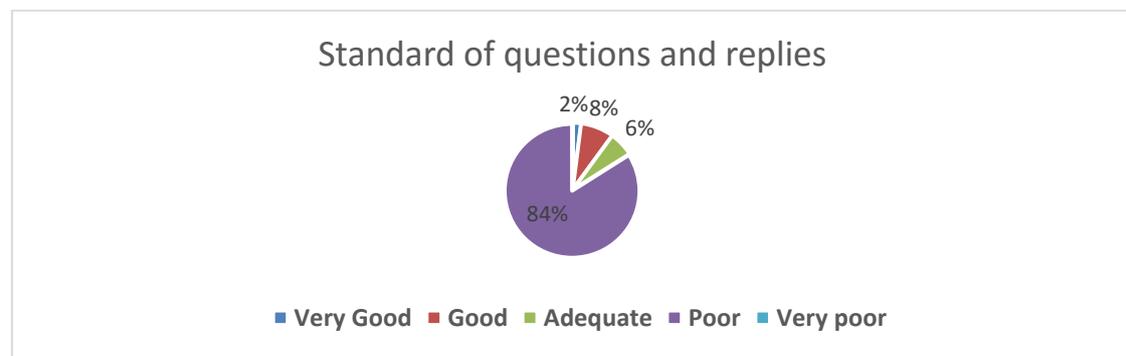


Figure 5.1: Standard of questions and replies

When the respondents were asked about the availability of Ministers to reply to questions during the fourth Parliament, twenty percent indicated that Ministers were always available, twenty two percent said they were mostly available, fifty-five percent indicated that sometimes they were available, and three percent said they were never available to reply to questions.

It was alarming to find that all respondents indicated that no sanctions were put in place during the fourth Parliament according to the rules if a question stood over more than once. The respondents further indicated that no process was in place to deal with unsatisfactory, inadequate or flippant replies. While all respondents claimed that supplementary or follow-up questions were allowed, it is difficult to understand how they would benefit the fourth Parliament when ministers were not frequently available to answer the initial questions posed to

the executive and no sanctions imposed for having questions not answered for more than one session.

All respondents indicated that the questions to the President were not treated the same as those to the ministers. When asked to specify, the respondents were of the opinion that the President is only required to answer questions four times and that the questions to the President were first vetted by the Presiding Officers while it is not the case on the questions to the ministers.

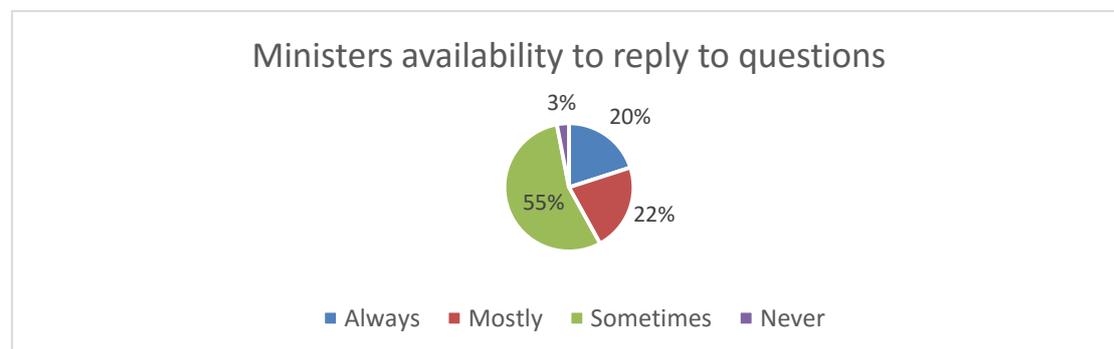


Figure 5.2: Ministers availability to reply to questions

Analysis

According to Yamamoto (2007:49) “a Parliamentary question is, by definition, a request for information”. If eighty-four percent of questions and replies during the fourth Parliament, as claimed by the respondents, were of poor standard, then getting proper and accurate information should have been difficult. Without proper and accurate information, decision-making becomes difficult for members of Parliament.

Having to deal with a poor standard of questions and replies is already problematic, but when also ministers do not avail themselves to reply to questions, the constitutional mandate to oversee the executive is compromised. The result is an executive that accounts to itself, which is not what the writers of the Constitution intended. The lack of rules to deal with unsatisfactory, inadequate or flippant replies does not help, as ministers could provide, at their own will, vague responses that were inadequate and did not address the substance of the question posed to them.

Even though all respondents indicated that supplementary or follow-up questions were allowed during the fourth Parliament, the availability of ministers to reply to questions compromised the oversight and accountability process. The President was only required to appear to reply to questions four times a year, replying to six questions once per term. In contrast, the Deputy President generally replied to questions once every two weeks.

5.2.5.1.2 **Motions without notice**

Findings

On the question as to whether motions without notice were technically challenging during the fourth Parliament, the statistics revealed that ninety percent of respondents were of the opinion that the motions without notice were technically challenging. However, ten percent differed from this view. When asked to specify those who indicated motions without notice were challenging indicated that members repeated what was already adopted by the houses of Parliament. Members of Parliament also tend to use the motions without notice as an opportunity to give positive exposure to the political party that moves the motion without notice.

All respondents indicated that motions without notice needed to be cleared with all parties prior to a sitting of the houses. All respondents also pointed that the fourth Parliament dealt with congratulatory or general condolence motions before the houses.

Analysis

The motions without notice are a mechanism that members utilise to inform the house to deal with a certain matter or to take notice of a particular matter. The findings reveal that members repeat matters already adopted by the respective houses and thus deal with issues that could be dealt with in members' statements, thus prolonging their motions without notice to become speeches. The difficulty of that situation is that the houses may find themselves with a

motion without notice that goes beyond the constitutional mandate of the houses by, for example, instructing the executive to take a certain action, thus undermining the separation of power doctrine.

Parties needed to consult if a member wishing to move a motion without notice so that consent could be obtained in advance. The notice to other political parties was also to avoid an “ambush” of others in the houses and to ensure that the motion without notice was constitutionally and procedurally in order. It was the practice of the fourth Parliament to move motions without notice as congratulatory or general condolence motions.

5.2.5.1.3 Notices of motion

Findings

All respondents indicated that Members of the fourth Parliament were allowed to bring matters before the Houses for debate through a motion. When respondents were asked to indicate the types of motions utilised by the members, they identified two types of motions:

- The subject for discussion, which they indicated as a motion that provides an opportunity for the houses to debate a particular topic or matter without expecting the houses to take a decision at the end of such a debate;
- The draft resolution, which is a motion that aims for the houses to take a decision on a particular matter.

When asked what issues to consider when drafting a motion, the respondents mentioned that a motion must:

- Consist of a clear and concise proposed resolution of the House;
- Deal with a matter within the competence of the house;
- Deal only with one matter;
- Cannot issue instructions to the executive; and
- Cannot contain statements, quotations or other matters not strictly necessary to make the proposed resolution or order intelligible.

All respondents indicated that notices of motion were subject to debate in the house. When asked to specify the respondents indicated that all motions were subject to the rules of debate of the houses, including the rule on the use of offensive or unbecoming language and the sub judice rule.

Analysis

The fourth Parliament allowed members to bring matters before the houses for debate though utilising such mechanisms as notice of motion. Members of the fourth Parliament were able to bring matters for debate without the house expected to take a decision. They were also afforded an opportunity to bring a matter for debate with the expectation to take a decision on a matter. The notice of motion was also subjected to the rules of debate of the house, which provides guidance on the language acceptable in the houses and how to deal with matters that are under the sub judice rule.

5.2.5.1.4 Budget votes

Findings

Eight-five percent of respondents thought that budget votes are an effective tool to oversee the executive actions and planning, while fifteen percent thought the opposite. All respondents indicated that no budget was ever rejected by the fourth Parliament. All respondents indicated that the consequences of Parliament rejecting a budget would be that the current government would be expected to resign and would have to call for election of a new government.

Analysis

Budget votes are a great tool to be utilised for executive oversight in that they assist Parliament to improve budget management. During the fourth Parliament, no budget was rejected, as this would have led to new elections being called. The issue here could also be the lack of capacity to reject the budget for fear of initiating the fall of government. The fear to reject the budget may also emanate from the reluctance to delay the implementation of policy.

5.2.5.1.5 Members statements

Findings

All respondents indicated that the fourth Parliament utilised member's statements to conduct oversight. All respondents also indicated that members of the cabinet were not allowed to make members statements. Furthermore, all respondents said that the opportunity to respond to statements directed to them or their portfolio was at the expiry of members' time. This way the executive is made to account to Parliament.

Analysis

Members' statements are another tool to oversee the executive and ensure that members of the executive respond to the brief statements on any matter raised. The response to the statement can also be undertaken by the relevant Deputy Minister or Minister in the same cabinet cluster.

5.2.5.1.6 Statements by cabinet members

Findings

Ninety-seven percent of respondents, when asked what kind of statements were allowed to be made by cabinet ministers, mention that it should be a policy statement related to the government policy and actions of the executive that the houses should be made aware of. Three percent of the respondents did not provide an answer. When the participants were asked whether they feel that members of the cabinet were provided more time compared to members of Parliament to make statements, sixty-three percent said yes, while thirty-four percent said no, and three percent did not respond.

Analysis

Statements by cabinet members provide an opportunity for a cabinet minister to make "factual or policy" statements relating to government policy that they

wish the houses of Parliament should be informed of. The statements by the cabinet member is not to be used for party-political purpose (Parliament, 2004:128)

5.2.5.2 Petitions

Findings

The handling of the petitions aspect of oversight and accountability was not formalised into Parliament oversight process. Two percent of respondents stated that the fourth Parliament had have rules that indicate the procedure for dealing with petitions of general nature or unsolicited submission, while ninety-eight percent said there were no such rules. All respondents indicated that the committee on Private Members Legislative Proposals and Special Petitions did not report to the NA on its activities. In addition all respondents indicated that no time frames existed for processing petitions from the date of referral of a petition. All respondents chose the written petition as the standard format that existed in the fourth Parliament for the public to submit petitions.

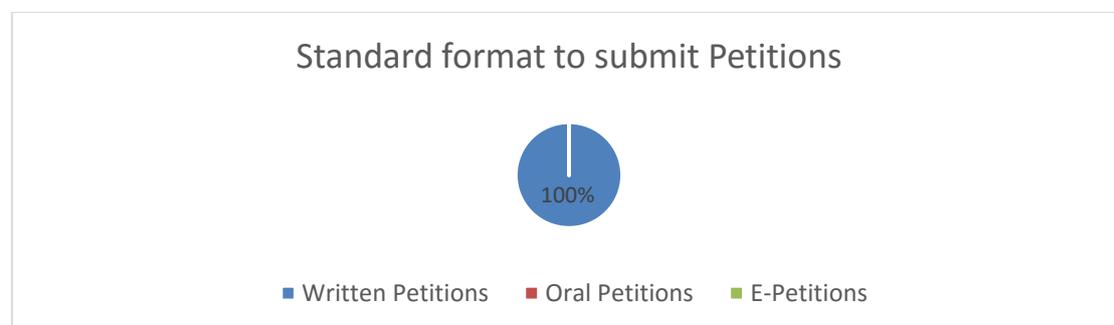


Figure 5.3: Formats for the public to submit Petitions

All respondents indicated that no Petition Act existed during the fourth Parliament. When asked how Parliament encourage the public to submit petitions, all respondents referred to public education initiatives and in the sectoral Parliaments. When asked what happen to the public submissions that were received, twenty percent said they were always summarised, eight percent said they were passed on to the relevant committee as is, two percent said it depends on the specific committee and seventy percent choose “other”.

The latter indicated that the rules of the NA were silent on how to process unsolicited public submissions, memorandums and representations which were at times called “petitions”.

They further indicated that no formal mechanism existed in the NA for the processing of the submissions. They further stated that the NCOP did not differentiate between the unsolicited submissions and special petitions, as both were referred for consideration by the Members Legislative Proposals and Petitions Committee.

Analysis

The Constitution (1996), in terms of section 56 (d) and 69 (d) provides for the NA and NCOP to receive petitions. However, the fourth Parliament did not have rules in order to indicate the procedure for dealing with petitions of general nature or unsolicited submission. It is unfortunate that it should be noted that the fourth Parliament did not have a formalised petitions process, either through an act of Parliament or its own rules.

In order to ensure that NCOP fulfils its constitutional mandate, it just did not distinguish between unsolicited petitions and special petitions, and, as a result, referred both for consideration by the Committee on Members Legislative Proposals and Petitions. The lack of a petition act causes a lot of confusion on how to legally and procedurally process submitted petitions whether they are unsolicited public petitions or special petitions.

5.2.5.3 Approval of annual budget and strategic plans

Findings

During the fourth Parliament, the executive priorities expressed in the MTEF were taken into consideration and ensured their alignment with government’s plans and performance. In order to ensure that institutional mechanisms are effectively undertaken, a Parliamentary Oversight Cycle prescribed the Parliamentary process of ensuring that government plans and performance are

in line with priorities expressed in the MTEF. All respondents indicated that the fourth Parliament always ensured that government plans and performance are in line with priorities expressed in the MTEF.

All respondents confirmed that the fourth Parliament had a Parliamentary oversight cycle. All respondents also further indicated that the oversight cycle took into cognisance the MTEF. The respondents further mentioned that other important issues that the oversight cycle took into cognisance, other than the MTEF, included the Medium Term Budget Policy Statement; the annual Appropriation Bill, the Division of Revenue Act, and legislation relating to and guiding the raising of national revenue.

All respondents mentioned that the fourth Parliament did not have a tool in place to optimise Parliament's role in the budget stages. This is important, as the tool could have provided means through which the fourth Parliament could have monitored the executive delivery over a long period of time, instead of focusing on the annual commitments and planning.

Analysis

The budget cycle is an important tool of oversee the executive with regard to its management and expenditure of revenue. The executive accountability cycle commences with the initiation of a three year strategic plan that is consistent with the MTEF. The budget accountability cycle incorporates a number of activities, which informs the oversight process of Parliament. Parliament engages the executive departments in a strategic micro-prioritisation process, budget process, quarterly report process, annual report process, and the strategic oversight intervention processes (SALSA, 2008:17)

5.2.5.4 Committees role in Parliamentary Oversight

Findings

Committees in a Parliamentary setting are engine rooms of Parliament. They claim their existence from the powers provided in terms of the Constitution, rules of the NA, rules of the NCOP, the Joint rules of Parliament and resolutions taken in the houses to oversee the executive. Forty-five percent of respondents

agreed that the programme of the fourth Parliament provided adequate time for the implementation of the plans of committees, while fifty-five percent felt otherwise.

An overwhelming ninety-four percent of respondents said that the budget allocated for committees was not adequate, while six percent indicated that it was adequate. All respondents indicated that committees of the fourth Parliament played a central role in expressing the Parliament oversight mandate and thus they contributed a great deal in ensuring that the executive accounted to Parliament. The Parliamentary committees of the pre-democracy era were not open to the public and press, a situation that stands in stark contrast to the fourth Parliament's committees that were confirmed as being open by all respondents.

The committees of the fourth Parliament, as indicated by all respondents did not have formal decision-making power. This means that committees cannot take decisions on behalf of the houses, but rather consider matters on behalf of the houses by investigating a particular issue and then report to the house on their findings for formal decision-making. The alarming issue is that forty-seven percent of respondents felt that the reports produced by committees were poor in quality. Twenty-three percent of respondents said they were good. Twenty-seven percent said they were adequate and three percent said they were very poor.

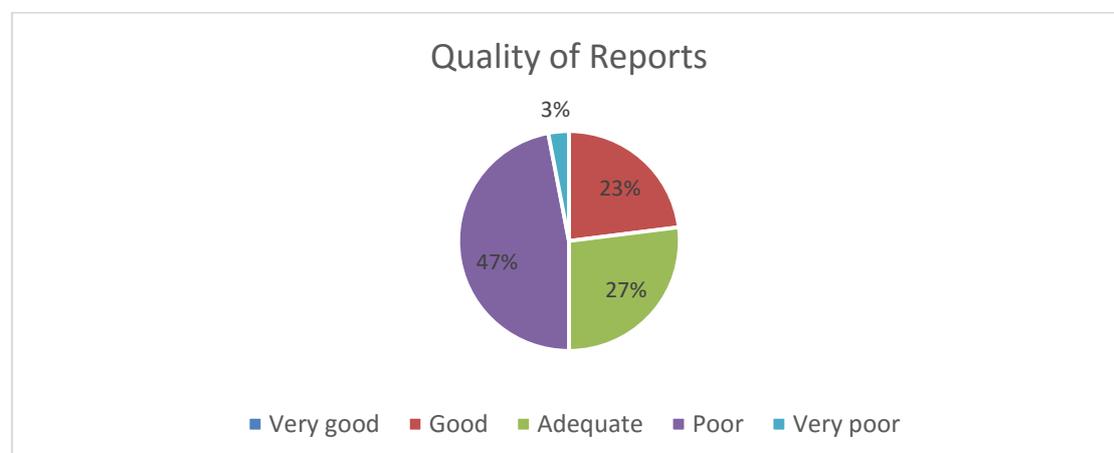


Figure 5.4: Quality of reports produced by committees

In response to how committee reports were dealt with by the houses, the respondents indicated that the reports produced by the committees were either noted or adopted by the houses. Since the respondents already indicated that all most fifty percent of the reports generated by the committees were poor, a number would then have to be noted and no action could be taken since the reports were not adopted by the houses. This is confirmed by the respondents indicating that if the reports were not adopted or noted by the house, the main reason would have been that in sixty percent of times, the reports were of poor standard. Thirty-four percent of the times, the reports were not approved by Committee Members. Two percent of times, reports were not submitted on time. Four percent of the times, reports were not drafted.

Eighty percent of respondents indicated that members were trained in the responsibilities and limits of the Parliament oversight mandate, while twenty percent differed. All respondents further indicated that committees were supported by trained and professional staff. Ninety-three percent of respondents indicated that committee chairpersons have no influence over the executive. Eighty respondents indicated that during the fourth Parliament there was no common understanding among members of Parliament on their role and powers of committees with regard to oversight. Twenty percent differed on this view. All respondents highlighted that committee members had no research capacity to deal with policy issues effectively.

Analysis

In order for committees to be effective in their oversight function, adequate time for implementation of the plans devised by committees should be provided. The programme of the fourth Parliament, as indicated by a majority of respondents, did not provide adequate time in ensuring that committees conduct their oversight work thoroughly. An inadequate budget also made it difficult, if not impossible, for committees to fulfil their mandates. Committees, in the course of executing their duties, undertake oversight visits to investigate matters, and conduct study tours, which require that a sufficient budget be put in place.

The opening of committees to the public and the media is great for democracy and ensures that public participation is promoted. It is alarming to note that the quality of reports of committees was identified as poor by a majority of respondents. This is of great concern, as the effectiveness of the oversight visits undertaken, is linked to the quality and accuracy of reports produced. According to Parliament (2009:39) "Parliament is an institution that relies on information, and the success of Parliament depends to great extent on the institution's proficiency in gathering, recording, directing and generating information".

Once reports have been produced or generated by the committees, they are tabled in the houses of Parliament. Not all reports tabled in the houses are intended for adoption by the houses, but some are tabled to be noted in the houses. It then becomes very difficult, if not impossible, for the houses to adopt reports if they are of poor quality. This has a negative effect to the oversight mandate of Parliament. The reason for the poor quality of reports is difficult to pinpoint, as the respondents indicated that the fourth Parliament committees were constituted by members who were trained in the responsibilities and limits of the Parliament oversight mandate. All respondents were of the view that committees were supported by trained and professional staff.

The lack of influence by committee chairpersons over the executive was a great disadvantage for effective oversight on the executive. The relationship between the committees and the executive could be characterised by political power and, in most cases, the members of the executive are highly ranked party members compared to the chairpersons of committees. The lack of political power by the committee chairperson could have led to an environment where they were not listened to and the views of the executive dominate the interaction. Challenged by the power relations between the committee chairpersons and the executive members, committees still had to deal with the lack of common understanding among members of Parliament on their role and the powers of committees with regards to oversight. Members of Parliament

were further confronted with the lack of research capacity to deal with policy issues effectively, which could also greatly hinder effective oversight.

5.2.5.5 Fiscal oversight

Findings

Parliament plays a very important role in the preparation of the national budget. Therefore, the fourth Parliament was consulted in the preparation of the national budget. All respondents confirmed the consultation and when asked how Parliament exercised fiscal oversight, thirteen percent of respondents said through the examination of the finance bill. Seventeen percent chose “reports from the finance committee”, Fifteen percent said through the confirmation and approval of the finance bill and five percent chose “field visits”. Fifty percent chose “other” and when asked to specify they indicated that Parliament conducts fiscal oversight by scrutinising government expenditure, government borrowings and revenue (tax), and through administrative principle or legal regulation.

When asked what would happen if Parliament failed to adopt a finance bill, fifty-five percent said a temporal budget was used, while forty-five percent said the previous budget is renewed. The respondents were further asked how Parliament exercised oversight over the execution of the budget and the response ranged from the review of government budget documents such as the budget strategy paper, budget outlook paper and economic survey, to the budget briefs for members of Parliament and policy analysis of revenue measures proposed in the budget.

The quality of inputs during oversight over the execution of the budget were described as very good by nine percent of the respondents, good by sixty-two percent of respondents, fifteen percent described them as adequate, poor by nine percent and while five percent indicated that they were very poor.

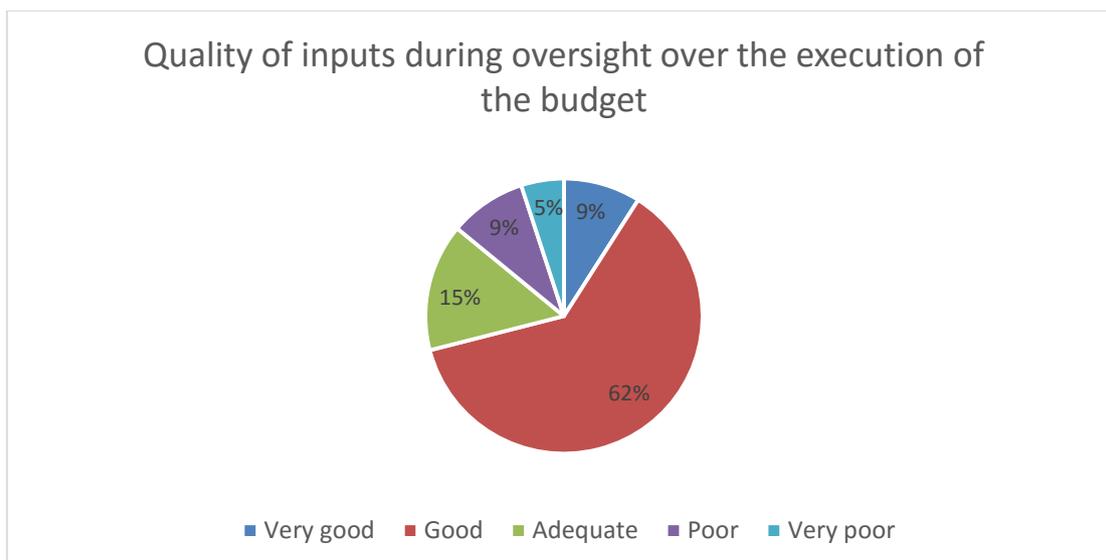


Figure 5.5: Quality of inputs during oversight over the execution of the budget

The respondents were asked what they would propose could be done to improve quality of inputs during oversight over the execution of the budget. The respondents indicated that more public involvement on policy priorities were required in the form of research analysis of micro-priorities that should be made available to members of Parliament and previous oversight reports on the micro-priorities, annual report and departmental budget be collated and made available.

Analysis

This study's observations would agree with Carrillo-Florez and Petri (2010:14) when they argue that Parliaments ability to intervene actively in the budget process, not only in its adoption, but also in its elaboration and in monitoring spending is an indication of its effectiveness. In the case of the fourth Parliament, consultation mechanisms in the preparation of the national budget and Parliament with regard to fiscal oversight were implemented. The mechanisms for fiscal oversight included the examination of the finance bill, reports from finance committee, through confirmation and approval of the finance bill. The fourth Parliament scrutinised government expenditure, government borrowings, revenue (tax) and regulation.

The fourth Parliament did not only concern itself with the formulation of the budget but also its execution. On the positive side, the respondents felt that the quality of inputs during oversight over the execution of the budget were good by the majority of the respondents. More public involvement on policy priorities and the availability of micro-priorities to members could improve the quality of inputs during oversight over the execution of the budget.

5.2.5.6 Chapter 9 institutions role

Findings

Chapter nine of the Constitution of the Republic of South Africa shows additional institutions created by the Constitution to assist in the Parliament's oversight role, while independent in their role even though reporting to the NA on their annual activities and budget. All respondents indicated that the chapter 9 institutions that existed during the fourth Parliament for oversight and accountability were the following:

- Auditor-General of South Africa (AGSA);
- Commission for Gender Equality (CGE);
- Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Commission);
- Independent Electoral Commission (IEC);
- Public Protector (PP); and
- South African Human Rights Commission (SAHRC).

The President appoints the Auditor-General, Public Protector and Members of the South African Human Rights Commission, Commission for Gender Equality and Electoral Commission. This is done based on the recommendations of the NA. The respondents indicated that even though the Chapter 9 Institutions were constitutional bodies, their relationship with Parliament was that firstly they account to the NA by tabling their annual reports, which were then referred to the portfolio committees that deal with that particular oversight matter. Such

reports are a source information to be utilised by Parliament in enhancing its oversight mandate.

When the respondents were asked if the fourth Parliament gave enough value and attention to the reports of Chapter 9 Institutions, fourteen percent of the respondents said very often, twenty-seven percent said often, fifty-two percent said not often, and seven percent said never. Eighty percent of respondents indicated that only two-three hours was provided to the Chapter 9 Institutions for meaningful engagement with portfolio committees, fourteen percent indicated that engagements lasted for three-four hours, while six percent said it was for one-two hours. All respondents indicated that the institutions were independent from Parliament influences. The respondents indicated that for a better working relationship with Chapter 9 Institutions to promote oversight and accountability, Parliament would have to include the institution in its programming so as to give more time for engagements on tabled reports.

Analysis

According to section 181(5) of the Constitution, the institutions supporting constitutional democracy are accountable to the NA and must report on their activities and budget at least once a year. In addition, these institutions are expected to be independent, impartial and perform their functions without fear, favour or prejudice (South Africa, 1996:108). These institutions, even though accountable to Parliament, are independent of Parliamentary influence and only subject to the Constitution.

It is through the reports of these institutions that Parliament is able to regulate, monitor government performance, and hold it account. It was a serious challenge when fifty-two percent of the respondents said that the fourth Parliament only often gave enough value and attention to the reports of Chapter 9 Institutions. The other challenge is that of the time allocated in the Parliamentary programme for meaningful engagement with portfolio committees. Eighty percent of respondents indicated that only two to three hours were provided for annual meetings with the Chapter 9 Institutions.

The lack of meaningful engagements between Parliament and the various institutions supporting democracy was a result of the lack of programming that was supposed to include these institutions in the program of Parliament. Parliament cannot afford to ignore such reports as they help with gaining a specialised perspective on government performance, thus enabling effective oversight by Parliament.

5.2.5.7 The role of opposition on oversight

Findings

According to Schmitz (1988:1) “the division between government and opposition is as old as political democracy itself”. In a democracy, the majority has the right to make decisions as much as the minority has a right to advocate for alternative policies. In the fourth Parliament, no special powers were provided constitutionally to the opposition parties in ensuring executive accountability.

All respondents indicated that all members of Parliament are obliged to hold the executive accountable. This means that holding the executive to account was not only the role of the opposition. Sixty-four percent of respondents indicated that the party list electoral system has an influence on the manner in which oversight was exercised during the fourth Parliament, while forty-six percent differed. When asked to specify, the respondents indicated that in most cases ordinary members of Parliament avoided confrontation with their senior party leaders in fear of not being included in the party election list in the next elections. Seventy-five percent of respondents indicated that a mixture of the proportional representation electoral system and the constituency-based electoral system would be more effective in overseeing the executive. Seventeen percent chose the proportional representation electoral system, while eight percent chose the constituency-based electoral system.

All respondents indicated that the relations between the opposition and the ruling party were very important for effective oversight during the fourth

Parliament. Sixty-two percent of respondents were of the view that opposition parties did not receive adequate time and resources to oversee the executive.

Analysis

Although the role opposition parties is to propose alternative policy to that of the ruling or majority party, but the role of ensuring that the executive accounts to Parliament is left to all members of Parliament. The Constitution of the Republic of South Africa accords no special powers to the opposition parties in ensuring executive accountability. The findings revealed that even though all members of Parliament were expected to hold the executive to account, the influence of the party list electoral system influence the manner in which oversight was exercised during the fourth Parliament. The reason being that backbenchers in the houses avoided to confronting their party leaders and seniors for fear of being excluded from the party list on the next election period. Sensing the challenges imposed by the party list electoral system, a mixed electoral system was proposed as most appropriate electoral system for effective oversight and executive accountability.

In order for effective oversight to be realised, the relations between the opposition and the ruling party were seen as important during the fourth Parliament. The opposition during the fourth Parliament was not provided adequate time and resources to oversee the executive according to sixty-two percent of respondents.

5.2.6 Monitoring and evaluation

Under this section the mechanisms employed by the fourth Parliament for monitoring and evaluating the implementation of its oversight and accountability Constitutional mandate are discussed, by interpreting the findings and later providing an analysis of those findings.

5.2.6.1 Monitoring

Findings

On the question on whether the fourth Parliament had any mechanism in place for monitoring and tracking the executive responses, thirty-one percent of respondents said no, while sixty-nine percent differed. When asked how the function of communicating house resolutions to the relevant minister by the Presiding Officers soon after their adoption by the house carried out. The respondents indicated that the resolutions that require responses were not annotated on the Order Paper until the responses requested by the Presiding Officers were received.

All respondents indicated that a mechanism was in place for the Presiding Officers to request compliance from the relevant minister. The rules of the fourth Parliament did not allow for a minister to be called to account in the house for non-compliance, according to seventy-seven percent of the respondents, while twenty-three percent differed. All respondents indicated that the fourth Parliament did not have mechanisms to avail resolutions and compliance with outcomes to the houses. All respondents indicated that a database of all stakeholders which is updated on an ongoing basis was not kept by the fourth Parliament.

The activities that were employed in the monitoring of resolutions during the fourth Parliament, as per the responses received, included a register of communications, which included date of adoption of the report and the expected date of response, which is updated as the letter is dispatched to the recipient's office. Another mechanism involved generating quarterly reports for the Presiding Officers on the resolutions communicated and the responses received.

The monitoring of responses was done manually according to all responses received. In the case of non-compliance, a process was in place to notify the Leader of Government Business. The responses indicated that a link did not exist in the fourth Parliament between the Leader of Government Business and the Parliamentary Liaison Officer to assist with tracking and monitoring to

ensure compliance. Ninety-three percent of respondents felt that the monitoring system was not effective, while seven percent differed. When asked to explain, they indicated that there was no technological system in place, data was not updated regularly, with no tracking mechanisms in place and compliance could not be forced on the executive. The system could be improved by developing an electronic system to track and monitor resolutions adopted by the houses.

Analysis

It is evident that the fourth Parliament did not have a formal and standardized monitoring system for the tracking and monitoring of resolutions and responses provided by the executive in order to create a culture of compliance and thus leading effective oversight and executive compliance, which could have led to effective oversight and executive compliance. According to the UNDP (2002:6) “monitoring is a continuing function that aims primarily to provide managers and main stakeholders with regular feedback and early indications of progress or lack thereof in the achievement of intended results”. The fourth Parliament failed to implement proper monitoring mechanisms in terms of the oversight standards and expectations as set out in the Constitution of the Republic of South Africa.

5.2.6.2 Evaluation

Findings

Evaluation involves a process of assessment on the work concluded in order to measure the impact - whether positive or negative (Scott, 2009:96). It involves the review of the strategic objectives and implementation strategies in order to achieve the required standard and outcome. The fourth Parliament failed to evaluate oversight and accountability programmes including its failures, success, efficiency and effectiveness. The fourth Parliament also failed to have a specific unit dealing with the aspect of Monitoring and Evaluation. The impact of oversight and accountability was not assessed during the fourth Parliament according all respondents. Since no evaluation took place, there were no recommendations for improvement and incorporate these recommendations

into the institutional processes. The fourth Parliament did not have a specific unit to deal with the aspect of monitoring and evaluation. All respondents indicated that there were no methods for assessing the impact of oversight and accountability.

Analysis

According to Sera and Beaudry (2007:1) “evaluation is the systematic and objective assessment of an on-going or completed project, program, or policy, and its design, implementation and results”. The objective of evaluation, as stated by Kusek and Rist (2004:12) “the aim of evaluation is to determine the relevance and fulfilment of objectives, development efficiency, provide information that is credible and useful, and will enable the incorporation of lessons learned into the decision- making process of all parties involved”. When analysing the findings it becomes clear that the fourth Parliament ignored the monitoring and evaluation aspect of management in order to measure the level of relevance, efficiency, effectiveness, impact, and even the sustainability of oversight and accountability. A standardised monitoring and evaluation system needs to be implemented in Parliament in order to ensure that the inputs, activities, outputs, outcomes and impacts are fully monitored and evaluated in order to ensure that Parliament learns from its own actions and improves where necessary. This should occur as it fulfils and strengthen its constitutional mandate to oversee the Executive and hold the Executive to account for its action and performance.

5.3 Summary and deductions on the state of oversight and accountability in the Parliament of the Republic of South Africa during the fourth Parliament

The state of oversight and accountability in Parliament of the Republic of South Africa during the fourth Parliament involves a number of areas that need improvement and strengthening in order to build an effective Parliament with solid oversight and accountability mechanisms. In order to ensure that Parliament is able to hold the executive to account, thus building an open

society that is responsive to the needs of its own people, these gaps need to be attended to, as indicated by means of the recommendations in the next chapter. The Constitution of the Republic of South Africa is the policy guideline that informs the institutional processes and programmes on oversight and accountability. The Parliamentary mandate to oversee the executive was understood in Parliament and resourced with a budget. The fourth Parliament also had a Parliamentary programme in place but did not align itself with the established fixed time frames for certain processes of the Money Bills Amendment Procedure and Related Matters Act.

With regard to immunity and code of conduct, members enjoyed immunity from prosecution and detention in the chamber and a code of conduct applied to members of Parliament as much as to the members of the executive. Constitutional, legislative, policy and strategic frame work matters were understood by the fourth Parliament. The Parliamentary programme included hearings in committees, oral and written questions to the executive, budgetary oversight, and debates on departmental reports. The lack of policy as an integral aspect of Parliament's strategic plan in relation to oversight and accountability reflects the gaps in business planning and specific implementation activities. In terms of institutional arrangements, systems and process the indication is that an institutional structure was in place to ensure decision making, but it was surprising when the respondents indicated that the ultimate political responsibility was in the hands of political parties. The institution lacked an administration unit to carry out oversight and accountability implementation plans.

The lack of institutional arrangements in terms of processes to be followed in conducting oversight and ensuring accountability were concerning, e.g. oversight of the Reserve Bank. There were no processes and guidelines for interaction and engagement of members of Parliament with ministers on issues of public concern. The fourth Parliament did not consider and exploit traditional South African mediums such as Lekgotla, Bosberaad and Imbizo for engagement on broader complex issues to fulfil its oversight mandate.

Parliament did not have electronic or manual systems in place for oversight and accountability. There were no database management system, project management and planning system, tracking system, e.g. resolution tracking system and monitoring and evaluation system, and no communication system on oversight and accountability. In addition, in the area of technology and systems to conduct oversight, the fourth Parliament did not develop a budget vote tool to detect and prevent poor financial planning and mismanagement of public funds.

The practical implementation activities of oversight and accountability involved debates, which were rated as being of poor standard and the standard of questions and replies were identified as poor. No formal regulations were in place to formally process submitted petitions. The major constraint was the lack standardised petitions process in the fourth Parliament. The role of committees was identified as important in Parliamentary oversight, but the quality of reports produced by committees was of concern and contributed negatively to effective oversight of the executive.

The role of Parliament in the preparation of the national budget was seen as important and the quality of inputs during oversight over the execution of the budget was seen as good. Chapter 9 Institutions were an additional mechanism to assist Parliament in its oversight role but of concern is that the reports of these institutions were not given enough value. Furthermore, the time allocated for engagement with the institutions was not adequate. Even though the opposition parties were not exclusively obliged to hold the executive accountable, their role within the context of a collective oversight responsibility cannot be ignored. The electoral system and the party list system were identified as major negative contributors to effective oversight. The relations between the opposition parties and the majority party were seen as of importance for effective oversight during the fourth Parliament. Murray and Nijzink (2002:133) state that “the problems that South Africa’s young legislatures are facing at present are not unique and are similar to those in other countries with similar political systems. The issue of executive dominance, the

matter of party discipline, the lack of true deliberative decision-making and weak networks between members and the public are common complaints around the world”.

The challenges of the fourth Parliament in ensuring that the executive accounts to Parliament were both practical, political and also coupled with institutional weaknesses. The Constitution is our standard for Parliament and the executive and the findings indicate that the challenges affect the implementation of the oversight mandate and function. The executive was never meant to be an entity that controls the people but a tool for the people through roles of government. If such weakness as identified in this chapter exist what is then stopping the executive from acting outside the Constitution especially when Parliament fails to hold the executive accountable. In order to hold the executive accountable is to hold them to the standard of our Constitution.

The Constitution lays out a Parliament that should always form a bastion of defence of the Constitution first and the principles enshrined therein. Parliament can't be involved in the violation of the Constitution through not properly implementing its oversight function and ensuring executive accountability by putting in place strong mechanisms to ensure accountability by the executive.

The next chapter presents recommendations in order to address the challenges and gaps identified in chapter five. The next chapter seeks to present realist recommendations that can be implemented by future Parliaments to address the challenges identified during the fourth Parliament with regard to oversight and accountability. The recommendations seek to build a new bridge that will ensure accountability as mandated by the Constitution. The recommendations will be presented against each subsection stated in chapter five based on the findings and analysis discussed in this chapter.

**CHAPTER 6: RECOMMENDATIONS AND THE WAY
FORWARD FOR OVERSIGHT AND ACCOUNTABILITY IN
THE PARLIAMENT OF THE REPUBLIC OF SOUTH
AFRICA.**

6.1 Introduction

Oversight is the role of Parliament in monitoring and reviewing the policy implementation of the executive and its budget, and evaluating the impact of implementation. This chapter seeks to find a holistic and practical approach in order to address the challenges and shortcomings of oversight and accountability identified in the Parliament of the Republic of South Africa during the fourth Parliament. The findings point to the lack of systems, processes, policies and strategic framework to ensure that Parliament is able to hold the executive to account through implementation of its constitutional mandate of oversight. The weaknesses identified relate to the following:

- Aspects of Parliamentary mandate;
- Constitutional, legislative, policy and strategic framework;
- Institutional arrangements, systems and processes;
- Technology and systems to conduct oversight;
- Implementation activities; and
- Monitoring and evaluation.

Recommendations will be provided for each subsection discussed in chapter five, based on the findings and analysis that were considered. The recommendations will indicate if further studies are recommended in terms of the results of the findings in chapter five. Included in this chapter will also be recommendations on how best future studies could overcome the limitations experienced by the present study. The chapter will also include a succinct overview of the research that was undertaken and conclude by finding out if the aims and objectives of the study, as outlined in chapter one were achieved.

6.2 Conclusion

This study's main objective was to evaluate and assess the oversight and accountability mechanisms employed by the fourth Parliament of the Republic of South Africa.

Chapter 1 of the study gives the technical understand of why and how the study would be conducted. Chapter 2 discussed the literature review on oversight and accountability by first providing a discussion on oversight and accountability and related concepts. The discussion involved both the theories and a comparative international study of the implementation using a selected number of international Parliaments - considering how their cameral structure influences oversight and accountability.

In order to generate evidence to prove the research hypothesis, the current mechanisms of oversight and accountability in the South African legislative context were discussed and their current state was reviewed. The main discussion centred on the South African model of oversight and accountability and the mechanisms for conducting oversight and accountability in the Parliament of the Republic of South Africa.

Once the mechanisms of oversight and accountability in the fourth Parliament were reviewed to find their strengths and weaknesses with regard to their practical application, a numbers of findings were drawn from the respondents and analysed. These findings clearly indicated the strengths and weakness. Once the process of reviewing the mechanism employed by the fourth Parliament was identified, it become evident that the challenges or weakness were much greater than any strengths identified.

The findings were analysed and the weaknesses identified proved and supported the hypothesis of the study, namely that the oversight and accountability mechanisms employed by the fourth Parliament of the Republic of South Africa were ineffective, and that MPs did not understand their role, function and mandate in overseeing the executive and being able to hold it to account for its actions and or lack of action. Once the findings and analysis were concluded, the study continued by proposing a number of recommendations in order to rectify and improve on the identified challenges as a contribution to ensure that the constitutional mandate and provision on oversight and accountability can be achieved.

6.3 Recommendations

The recommendations presented below are based on the findings and analysis on Parliamentary mandate; Constitutional, legislative, policy and strategic framework; institutional arrangements, systems and process; technology and systems to conduct oversight; implementation activities (practices); and monitoring and evaluation.

6.3.1 Parliamentary mandate

The recommendations presented on Parliamentary mandate include the beginning and end of Parliament; Parliamentary programme and oversight function; immunity and code of conduct:

6.3.1.1 Beginning and end of Parliament

- a) Members of Parliament and staff should be trained on the mechanisms to conduct oversight and accountability at the beginning of each Parliament.
- b) The emphasis of the training should be on the responsibilities of each Member of Parliament regardless of political party affiliation.
- c) The training should also be on how to utilise Parliamentary budget allocation for oversight and accountability.

6.3.1.2 Parliamentary programme and oversight function

- a) Sharper focus on legislation such the Money Bills Amendment Procedure and Related Matters Act, which determines fixed timeframes for certain processes, is required.
- b) Programme Committees should be mindful of the Medium Term Budget Policy Statement (MTBPS), the processing of the Division of Revenue Bill (DoRB), and the Main Appropriation Bill, which require a different programming approach.

6.3.1.3 Immunity and code of conduct

- a) The immunity and code of conduct should separate the privileges applied to members of Parliament and those awarded to the members of the Executive, as their role and responsibilities differ on matters of oversight and accountability.

6.3.2 Legislative, policy and strategic framework

The recommendations aligned to the legislative, policy and strategic framework include oversight and accountability function; legislative, policy and strategic framework which are presented below:

6.3.2.1 Oversight and accountability function

- a) Alignment of the programme of Parliament with that of the executive.

6.3.2.2 Legislative, policy and strategic framework

- a) Develop an institutional policy on oversight and accountability.
- b) A business plan should be compiled annually for oversight and accountability and it must be linked to specific implementation activities.
- c) Separate the legislation mandate of Parliament from the oversight mandate in the strategic plan so that the oversight function can have clear programmes in support of the strategic plan.
- d) Set clear strategic outcome-orientated goals for the total term of office.

6.3.3 Institutional arrangements, systems and process

The institutional arrangements, systems and process findings are presented with recommendations on issues of structure; process; systems, processes and resources; and executive compliance.

6.3.3.1 Institutional arrangements- structure

- a) A clear indication be provided on political responsibility for oversight and accountability with the structure of Parliament.
- b) An oversight advisory unit to facilitate oversight in the houses of Parliament and its committees should be established.

6.3.3.2 Institutional arrangements-processes

- a) Review the Reserve Bank Act to require the Governor of the Reserve Bank to explicitly report to Parliament on the implementation of monetary policy and to submit the audited financial statements and the audit report on those statements to Parliament.
- b) Review the powers and functions of the Reserve Bank and subject them to conditions determined by an act of Parliament.
- c) An operational plan should be developed that will put a formal process in place for oversight and accountability implementation activities and it should include guidelines on the resources needed for effective oversight and accountability.
- d) Consideration is given to the use of traditional South African mediums, including Lekgotla, Bosberaad and Imbizo, for deliberation, engagement and debates on broader and complex issues affecting oversight and accountability.
- e) A process is developed for processing of reports from sectoral Parliaments and ensuring that the reports are tabled before the houses for consideration and adoption.
- f) Sectoral Parliament should be formally recognised in the rules and that provision should be made for their procedures, powers and functions.
- g) In order to oversee compliance with international agreements, rules must be drafted to allow Parliamentary committees to report on the international engagements by the executive.
- h) The processing of petitions of a general nature or unsolicited submissions should be explained in the rules.

6.3.3.3 Systems, processes and resources

- a) Develop a business case implementation plan for the facilitation, monitoring and tracking of oversight and accountability resolutions.
- b) The lack of database management system has an adverse effect, so it is recommended that Parliament develop a comprehensive electronic

project management system, database management system and planning system.

- c) A strategic framework for communication should be developed to ensure that oversight and accountability activities are shared with the broader community. Internal and external communication aspects should be included in the strategy and system.

6.3.3.4 Executive compliance

- a) Develop Parliamentary rules to assist Parliament further in sanctioning members of the executive for non-compliance after all established existing avenues and protocols have been exhausted.
- b) Develop a procedure for the executive compliance in order to improve on mechanisms that would ensure that there is reporting on responses by the executive on resolutions adopted by Parliament.
- c) NA rule 117 and NCOP rule 249, which provide a time frame for the executive to respond to a question for written reply, be amended to extend the timeframe for a response to twenty one days.
- d) A Joint Parliamentary Oversight and Government Assurance Committee should be established to implement effective measures to ensure compliance by the executive in the event that all existing avenues of eliciting a response from the executive have been exhausted. Its mandate would also be to consider and report on all assurances, undertakings and commitments given by members of the national executive in either house or in any committee of a house of Parliament.
- e) Notwithstanding the existing rules on conferral, but where committees are clustered for oversight, they should be able to report jointly on transversal matters and the house should adopt such cluster report. There would be a need for the NCOP rules committee to amend rules 101 and 104 of the NCOP to allow for conferring committees to publish a joint report.

6.3.4 Technology and systems to conduct oversight

The recommendation on technology and systems to conduct oversight is presented below:

6.3.4.1 Development of budget vote tool

- a) Develop a budget tool in order to assist MPs in carrying out their oversight function. The tool is to ensure that budget data, such as the changes in budget vote allocations and the relative proportion of the programmatic allocation, is readily available to both MPs and officials to carry out Parliament's oversight effectively.

6.3.5 Implementation activities (Practices)

Recommendations on the mechanisms and practices to conduct oversight include the following:

6.3.5.1 Plenary debates

- a) Parliament to provide training to MPs on public speaking as measure to address the noted decline on the quality of debates in Parliament.
- b) MPs must be encouraged to deliver their speeches in their mother tongue.
- c) MPs should be encouraged to do research to take steps to improve the content and substance of debates.
- d) The programme of Parliament should be structured in such a way that it provides enough time for debates.

6.3.5.1.1 Questions to the executive

- a) An appeal mechanism should be developed that will give the Presiding Officer the power to insist that a members of the executive responds to a question adequately.
- b) Questions to the President should be treated like all other questions and thus removing the vetting of questions to the President.
- c) Parliament should introduce four fifteen-minute interpellations per question day to ensure robust debates in Parliament.

6.3.5.1.2 Motions without notice

- a) Parliament to re-train its members and table staff in houses on motions without notice, i.e. procedure and rules regarding motions without notice.

6.3.5.1.3 Notices of motion

- a) In order to ensure effective oversight of the executive, the notice of motion should be able to give instructions to the executive subject to a resolution being taken by the house of Parliament.

6.3.5.1.4 Budget votes

- a) MPs should be trained and capacitated on budget processes to allow them to be able to reject a budget and be able to defend the decision.

6.3.5.1.5 Members statements

- a) The programme of Parliament should increase the time allocated for member's statements in the Houses. The response statement should only be done by the Minister or Deputy Minister responsible for the department being overseen, not by a representative.

6.3.5.1.6 Statements by Cabinet Members

- a) The programme of Parliament should allocate more time for members statements than statements by cabinet members to ensure that it is the cabinet that answers questions to Parliament, instead of giving statements that can be dealt with at other Parliamentary platforms.

6.3.5.2 Petitions

- a) The processing of special petitions is already covered in the NA rules. A decision now needs to be taken about whether a procedure for dealing with petitions of a general nature or unsolicited submissions should be written into the joint rules of Parliament.

- b) In the absence of any time frames for the processing of petitions, a proposal could be put forward for the committee to report to the NA and NCOP within thirty days from the date of referral of a petition.
- c) It is time for Parliament to create an opportunity on its website for the public to submit an e-petition.
- d) Parliament should make a decision about whether the constitutional provision and the Rules of the houses in regard to petitions are sufficient or whether a legislation is required. Whatever decision is taken, the constitutional provisions relating to the facilitation of public involvement by the houses in the legislative and other processes of the houses and their committees must be upheld.

6.3.5.3 Approval of annual budget and strategic plans

- a) Develop a system that enables Parliament to keep of all work that is done on the budget and ensure that such information and the strategic plans are fully utilised when the next financial year budget is approved.

6.3.5.4 Committees role in Parliament Oversight

- a) Parliament should focus on improving the quality of reports produced by committees by providing training on report formulation.
- b) MPs should be trained on the responsibilities and limits of Parliament's oversight mandate in order to reduce or eliminate inappropriate recommendations being made in reports.
- c) The issue of power relations between committee chairpersons and the executive should be addressed at a political level.

6.3.5.5 Fiscal oversight

- a) Mechanisms should be put in place that requires that Parliament request the executive to ensure that there is more public involvement on policy priorities.

6.3.5.6 Chapter 9 Institutions role

- a) Parliament should ensure that the interaction between Parliament and chapter 9 institutions is not restricted to annual meetings of about two-three hours.
- b) Parliament to utilise the reports of Chapter 9 Institutions to full potential in order to ensure a higher level of accountability by the executive.

6.3.5.7 The role of opposition on oversight

- a) A mixture of the proportional representation electoral system and the constituency-based system should be introduced in order to ensure that the country benefits from the positives of the two electoral systems.
- b) Adequate time be provided for the minority voice to be heard.

6.3.6 Monitoring and evaluation

The proposed recommendation on monitoring and evaluating the implementation of oversight and accountability is presented below:

6.3.6.1 Monitoring and evaluation

- a) The monitoring of executive responses should be done through an electronic system.
- b) The system should be able to capture letters that are sent to the executive, the responses received, and the time responses were received.
- c) The system could be developed to provide a reminder on specific functionaries at specific times.
- d) The system could also be set to produce a consolidated monthly report on all communications, which will be the basis of the report on outstanding responses sent to the Presiding Officers.

The recommendations are not in particular order of importance, but could address the challenges pertaining to oversight and accountability. The fifth Parliament and subsequent Parliament could improve on how the mandate of

oversight and executive accountability was handled by implementing the recommendations.

6.4 Summary

Chapter 1 of the study introduced the study by stating the research problem, clarify the rationale of the study, and providing research questions. An overview of the research design and methodology is provided in this chapter, followed by a research report sequence as an outline of the study's content. In chapter 2, the study defined oversight and accountability and the related concepts. A theoretical perspective was created in order to bring a global understanding to the concepts of oversight and accountability. This was achieved by providing an international comparison where a number of selected Parliaments from diverse economic and political backgrounds were considered. The key issue derived from the literature review was that oversight and accountability were linked to a democratic culture and strong commitment by those in power to put the interest of the people first.

Chapter 3 provided an overview of oversight and accountability in the South African context and how it is implemented the South African legislative context. The study discussed the South African model of oversight and accountability, specifying the constitutional provisions that refer directly and indirectly to oversight and accountability. Furthermore, Chapter 4 considered the policy framework for oversight and accountability in South Africa and clarified the mechanisms for conducting oversight and accountability in the Parliament of the Republic of South Africa.

Chapter 4 gave an in-depth discussion and information to the kind of research design chosen and the methodology to be followed. The study employed a quantitative research approach by utilising a questionnaire, covering aspects of and the mechanisms employed by the fourth Parliament in conducting oversight and ensuring the Executive's accountability. The study also utilised a literature

review based on published sources. The questionnaire was piloted before being administered to the rest of the sample

Chapter 5 served as the basis for testing the hypothesis relating to the mechanisms employed by the fourth Parliament to conduct oversight and accountability. An investigative study was conducted on the state of oversight and accountability during the fourth Parliament. The findings revealed a number of challenges and weaknesses that points to a situation that is not assisting in living to the standards that are set in the Constitution. The findings covered the main operational, constitutional and strategic aspects relating to the constitutional mandate of oversight and accountability. These aspects included the Parliamentary mandate; constitutional, legislative, policy and strategic framework; institutional arrangements; systems and process; technology and systems to conduct oversight; and monitoring and evaluation.

After the findings and analysis were discussed in chapter five, chapter six focused on the recommendations related to the mechanisms employed by the fourth Parliament in relation to oversight and accountability.

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Annexure 1

Questionnaire

Evaluation of oversight and accountability by the fourth Parliament of the Republic of South Africa

To inform the process of data consolidation and assessment, in terms of which a gap identification (swot analysis) will be done leading to findings and recommendations on implementation of the constitutional provisions on oversight and accountability implementation in the Parliament of the Republic of South Africa.

**2015 Oversight and Accountability Survey
(Parliament of the Republic of South Africa)**

The purpose of the questionnaire itself is to evaluate the extent to which oversight and accountability has been implemented during the term of the fourth Parliament (2009 -2014).

Kindly answer as accurate and objectively as you can and add additional comments should writing space not suffice.

This questionnaire has to be completed by a Member of Parliament during the fourth Parliament (2009 -2014)

The questionnaire is expected to take less than one hour to complete.

Please return the questionnaire to Mr L Mbete by e-mail: imbete@parliament.gov.za or fax to: 086 218 1688

Due date: 28 August 2015

Contact information

Name of respondent (OPTIONAL): _____

Position (2009 -2014): _____

Contact number: _____

Fax number: _____

E-mail address (OPTIONAL): _____

Please circle or tick the appropriate answer/s.

Section 1: Parliamentary Mandate

Beginning and end of parliamentary mandate

1.1 When did the Parliamentary mandate of the fourth Parliament start for Members of the fourth Parliament?

- When the election results were declared
- At the first sitting of the chamber
- When the new Members were sworn in
- At a fixed date (please specify the date) _____
- Other (please specify other) _____

1.2 When did the Parliamentary mandate of outgoing Members end?

- On the last day of the chamber's term (including early dissolution before expiry of its term)
- On the day of new elections
- After the new Members mandates are validated
- On the first seating of the chamber
- At a fixed date (please specify the date) _____

- Other (please specify other) _____

Immunity and code of conduct

1.3 Did the Parliamentarians enjoy immunity from prosecution or detention while in the chamber?

Yes No

1.4 Was a code of conduct in place during the fourth Parliament for Members of Parliament?

Yes No

Other (please specify) _____

1.5 Did the code of conduct apply to Members of the executive? **Yes No**

1.6 Was there a separate code of conduct for Members of the executive?

Yes No

Section 2: Constitutional mandate and responsibilities

Oversight and accountability function

2.1. Was the function of oversight and accountability important to the fourth Parliament? (Debates, Questions, Motions, etc.) **Yes No**

(Please elaborate on your chosen answer)

2.2. Did Parliament have powers to summon senior government officials?

Yes No

2.3. Did Parliament have powers to summon Members of the Executive?

Yes No

2.4. Did Parliament have powers to summon chapter 9 institutions? **Yes No**

2.5. Did Parliament have powers to approve key Executive appointments?

Yes No

2.5.1 If yes, were all Executive appointments during the fourth Parliament approved by Parliament? **Yes No**

2.6. How many oral questions were submitted to the Executive from **2009 - 2014**

2009:_____ 2010:_____ 2011:_____ 2012:_____ 2013:_____ 2014:_____

2.7. How many written questions were submitted to the Executive from **2009 -2014**

2009:_____ 2010:_____ 2011:_____ 2012:_____ 2013:_____ 2014:_____

2.8. How many oral replies were provided by the Executive from **2009 -2014**

2009:_____ 2010:_____ 2011:_____ 2012:_____ 2013:_____ 2014:_____

2.9. How many written questions were answered by the Executive from **2009-2014**

2009:_____ 2010:_____ 2011:_____ 2012:_____ 2013:_____ 2014:_____

2.13. Did Parliament have a budget for oversight and accountability?
Yes No

2.14. If yes, how much was the budget per annum? (Please provide figures since 2009)

2009: _____ 2010: _____ 2011: _____ 2012: _____ 2013: _____ 2014: _____

2.15. If there was no budget or an insufficient budget, how were oversight and accountability activities financed? (Committee site visits, etc.)

- Not financed
- Commercial sponsorship (mention) _____
- Donor funds (mention) _____
- Other (please mention) _____

2.16. What did the fourth Parliament's oversight and accountability programme involve or entail? Please provide a short description of all the elements of the programme.

2.17. Did the Parliamentary programme align itself with the established fixed time- frames for certain processes of the Money Bills Amendment Procedure and Related Matters Act e.g. Medium Term Budget Policy Statement (MTBPS), the processing of the Division of Revenue Bill (DoRB) and the Main Appropriation Bill?
Yes No

2.18. Was the programme of Parliament and that of the Executive, where possible aligned with each other? **Yes No**

2.19. Was the programme of Committees drafted in such a way as to accommodate the provisions of the Money Bills Amendment Procedure and Related Matters Act? **Yes No**

2.20. Did the programme of Parliamentary Houses (NA/NCOP) create more time for consideration of Committee reports as well as private Member's business (e.g. motions)?

Yes No

Section 3: Institutional arrangements, systems and processes

Institutional arrangements –structure

3.1. Was a sub-project developed to pursue the review of the Reserve Bank Act for purposes of aligning the Act with the Constitution in order for Parliament to exercise oversight over the bank? **Yes No**

3.2. Did an operational plan exist that outlined the processes and resources required for conducting oversight? **Yes No**

3.3. Do you think that adequate institutional support to Members of Parliament was provided to enable them to perform their mandates? **Yes No**

3.4. Did Parliament have facilities in Parliament for office space for Members of Parliament?

Yes No

3.5. How adequately sized and well-equipped were the Committee rooms in the fourth Parliament? **Yes No**

3.6. Was the parking space adequate enough to accommodate the Members of Parliament, Parliamentary Officials, visiting dignitaries, Executive Members and the public?

Yes No

3.7. Did the fourth Parliament develop guidelines for the interaction and engagement of Members of Parliament with Ministers on issues of public concern?

Yes No

3.8. Did the fourth Parliament consider traditional South African mediums such as Lekgotleng, Bosberaad and Imbizo for deliberation, debates and engagement on broader and complex issues, so as to fulfil its oversight function over the executive?

Yes No

3.9. What was the procedure followed during the fourth Parliament on processing of reports from sectoral Parliaments?

3.10. Were the sectoral Parliament e.g. Women's Parliament, formally recognised in the rules of Parliament (in terms of their procedures, powers and functions)?

Yes No

3.11. Did the rules of Parliament during the fourth Parliament provide for robust and proactive oversight over the Executive signing of international agreements that require approval of the Houses?

Yes No

3.12. Did the rules of the respective Houses of Parliament, provide for the Executive to report on negotiations, prior to signing of international agreements that require approval of the Houses? **Yes No**

3.13. Did the fourth Parliament have mechanisms in place to oversee compliance with international agreements? **Yes No**

3.14. Were general petitions, representations and submissions as specified in section 56 and 69 of the Constitution adequately addressed through institutionalised mechanisms? **Yes No**

Executive compliance

3.15. What rules of Parliament assisted in sanctioning Members of the Executive for non-compliance after all established existing avenues and protocols have been exhausted?

3.16. What mechanisms were in place to ensure that there is reporting on responses by the Executive on resolutions adopted by the fourth Parliament?

3.17. Did the fourth Parliament employ a tracking and monitoring mechanism on the Executive compliance as part of its continuous oversight function?

Yes No

3.18. Was a Joint Parliamentary Oversight and Government Assurance Committee appointed to consider and report on all assurances, commitments and undertakings given by Members of the Executive in either Houses or Committee of a House?

Yes No

3.19. Do you think that in order to enforce compliance with question for written reply, the review of NA rule 117 and NCOP rule 249 would had been necessary to change the period for responding in writing by the Executive from 10 days?

(Please explain your view):

3.20. Did the rules of Parliament allow for joint reporting by Committees on matters that are transversal and the House to adopt such a cluster report?

Yes No

3.21. How do you think joint reporting by Committees on matters that are transversal, benefits or does not benefit Parliament in fulfilling its

mandate on exercising oversight over the Executive especially during the fourth Parliament?

Section 4: Technology and Systems to conduct oversight

Development of budget vote tool

4.1. Did a budget tool exist to assist Members of Parliament in carrying out their oversight function? **Yes No**

4.2. If the budget tool existed did it consider the implications of developments around budget oversight work emanating from passing of Money Bills Amendment Procedure and Related Matters Act?

Yes No

Please explain:

4.3. How did the budget tool embrace the values and principles by which Parliament conducts oversight, e.g. transparency and accountability?

4.4. Did the fourth Parliament put in place an Information and Technology (IT) system for the purposes of budget oversight? **Yes No**

4.5. Is a budget tool necessary to detect and prevent poor financial planning and mismanagement of public funds, as well as improve accountability of the government and public agencies? **Yes No**

4.6. Please explain if you believe that a budget tool would assist in detecting waste within the machinery of government and public agencies in order to enable Parliament to improve the efficiency, economy and effectiveness of government operations.

4.7. Do you believe that a budget tool can assist Parliament to effectively coordinate its activities and deliver on its mandate, particularly on its new and extended role in the budget process? **Yes No**

4.8. Did the fourth Parliament create a budget information matrix for departments to assist in serving as an induction manual containing as

much information as possible about a department for new Members joining a Parliamentary Committee? **Yes No**

4.9. Were the oversight tools repositioned during the fourth Parliament to align them to the new extended role of Parliament in the budget process?

Yes No

4.10. Were systems in place to create appropriate links with the Executive, South African Revenue Services, South African Reserve Bank and other relevant organisations?

Yes No

Section 5: Monitoring and evaluation

Monitoring and Executive compliance

5.1. Please explain how important was for the fourth Parliament to put in place an oversight advisory section, to support services relating to monitoring and tracking of issues between Parliament and the Executive.

5.2. Did a subdivision of the oversight advisory section exist to develop systems for scrutiny of finances in the executive including, planning cycle, budget cycle, estimates cycle and reporting cycle? **Yes No**

5.3. How was the function communicating adopted Committee recommendations to the relevant Minister carried out?

5.4. Were resolutions that require responses within a specified period annotated on the Order Paper until the responses addressed to the Speaker or Chairperson were received? **Yes No**

5.5. Were quarterly reports and annual report on resolutions and compliance with outcomes made available to the Parliamentary Houses?

Yes No

5.6. Was the monitoring of responses from the Executive done electronically? **Yes No**

[Thank you for completing the questionnaire](#)

Email or Fax to: Luvuyo Mbete

Email: imbete@parliament.gov.za

Fax nr: (086) 615 9555

RE: QUESTIONNAIRE ON EVALUATION OF OVERSIGHT AND ACCOUNTABILITY DURING THE FOURTH PARLIAMENT 2009 - 2014

Kindly email or fax the completed questionnaire to Luvuyo Mbete by 28 August 2015



Enquiries: Luvuyo Mbete, Tel: 021 – 403 2516, Cell: 082 962 3728

*Parts of the questionnaire are from Scott (2009) “an analysis of public participation in the South African legislative sector” have been utilised

Annexure 2

Questionnaire

Evaluation of the oversight and accountability by the fourth Parliament of the Republic of South Africa

To inform the process of data consolidation and assessment in terms of which a gap identification (swot analysis) will be done leading to findings and recommendations on implementation of the constitutional provisions on oversight and accountability implementation in the Parliament of the Republic of South Africa.

**2015 Oversight and Accountability Survey
(Parliament of the Republic of South Africa)**

The purpose of the questionnaire itself is to evaluate the extent to which oversight and accountability has been implemented during the term of the fourth Parliament (2009 -2014).

Kindly answer as accurate and objectively as you can and add additional comments should writing space not suffice.

This questionnaire has to be completed by Manager responsible for oversight and accountability in the fourth Parliament (2009 -2014).

Please return the questionnaire to Mr L Mbete by e-mail: Imbete@parliament.gov.za fax to: 086 218 1688

Due date: 28 August 2015

Contact information

Name of respondent: _____

Position (2009 -2014): _____

Contact number: _____

Fax number: _____

E-mail address: _____

Section 1: General

Please circle or tick the appropriate answer/s.

1.1 Did the fourth Parliament have a Parliamentary programme that encouraged oversight and accountability?

Yes No

1.2 Did the Parliamentary programme align itself with the established fixed time frames for certain processes of the Money Bills Amendment Procedure and Related Matters Act e.g. Medium Term Budget Policy Statement (MTBPS), the processing of the Division of Revenue Bill (DoRB) and the Main Appropriation Bill?

Yes No

1.3 Who should have the primary responsibility for ensuring that oversight and accountability takes place in the legislative process? (*Circle your choice/s*)

- The Members of Parliament individually
- Political Parties
- The institution of Parliament/Parliament administration
- Presiding Officers (Speaker/Chairperson)
- A mixture of all the above

1.4 Why is oversight and accountability important to Parliament? (debates, Questions, Motions, etc)

1.5 What is the basis from which you conducted oversight and accountability in Parliament? (E.g. Constitution, oversight and accountability strategy etc.)

1.6 Did Parliament have a budget for oversight and accountability?
Yes No

1.7 If yes, how much was the budget per annum? (Please provide figures since 2009)

2009 _____
2010 _____
2011 _____
2012 _____
2013 _____
2014 _____

1.8 If there was no budget or an insufficient budget, how were oversight and accountability activities financed? (Committee site visits, etc.)

- Not financed

- Commercial sponsorship (mention) _____
- Donor funds (mention) _____
- Other (please mention) _____

Section 2: Legislative, policy and strategic framework

- 2.1 Did a policy exist relating to oversight and accountability?
Yes No
- 2.2 Was oversight and accountability an integral aspect of Parliament's strategic plan?
Yes No
- 2.3 Did a long-term oversight and accountability strategy and implementation plan exist in the fourth Parliament?
Yes No
- 2.4 Did the fourth Parliament compile an annual business plan for oversight and accountability linked with specific implementation activities?
Yes No
- 2.5 What did the fourth Parliament's oversight and accountability programme involve or entail? Please provide a short description of all the elements of the programme.

Section 3: Institutional arrangements, systems and processes

Institutional arrangements –structure

3.1 Who took ultimate political responsibility for oversight and accountability during the fourth Parliament? (*Circle your choice/s*)

- Presiding Officers (Speaker/Chairperson)
- Secretary to Parliament
- Various Committee Chairpersons
- Other (Please mention)

3.2 In which office was the programme on oversight and accountability located? (E.g. Speaker's Office, Chairperson's Office, Secretary's Office, etc.)

3.3 Was there a political structure in place dealing with oversight and accountability implementation? If yes, please mention the name.

3.4 What was the role of this structure in terms of oversight and accountability in the fourth Parliament?

3.5 Was there a specific administrative unit in place to carry out oversight and accountability implementation?

Yes No

3.6 What was the role of this unit in terms of oversight and accountability?

3.7 Where did this unit fit into the reporting and management structure of the Parliament of the Republic of South Africa? (Organogram or description)

3.8 How many staff were employed in the unit? (Mention permanent and contract staff)

3.9 What were their responsibilities? (Give an overview)

3.10 Have they had special training in the area of oversight and accountability or relevant areas such as legislation and oversight, Committees, legislation and proceedings, parliamentary questions, research, procedural services, money bills amendment procedure and related matters and budget and provincial and municipal governance, mechanism to deal with delegated legislation etc.?

3.11 What qualifications did your oversight and accountability staff Members generally possess? (E.g. legislation and oversight, Committees, legislation and proceedings, parliamentary questions, research, procedural services, money bills and budget and provincial and municipal governance, etc.?)

3.12 How well were they coping with the volume of work? (Circle your choice/s)

- Very well
- Well
- Average
- Barely coping
- Not coping at all

3.13 When oversight and accountability is conducted, did other units also get involved in the process? If yes, please mention them and the role that they played in the process.

3.14 Who was the accounting officer for any expenditure on oversight and accountability?

3.15 Where was the oversight and accountability office physically located?
(Please describe)

3.16 How accessible was the office to ordinary people, civic organisations and Members of Parliament? (Circle your choice/s)

- Very accessible
- Fairly accessible
- Not very accessible
- Not accessible at all

Please explain your choice

3.17 How did the oversight and accountability process work in Parliament (per activity)?-please describe or draw line diagram.

Examples

- All Committees deal with oversight and accountability
- Oversight and accountability unit carries out wishes of Committees /NA/NCOP

- Oversight and accountability Committee instructs oversight and accountability unit
- Oversight and accountability unit determines activities

3.18 Was the structure (political and administrative) working well for effective oversight and accountability? If no, what structural changes did you suggest for greater effectiveness?

3.19 Was there an adequate number of staff in the oversight and accountability unit in order for it to function optimally? If no, what additional staff would you have liked to see appointed?

3.20 Did staff Members require specific training in order to improve or optimise their performance? If yes, please mention type of training required.

Systems, processes and resources

3.21 In terms of information and communication technology, did Parliament have electronic (software) or manual systems in place for oversight and accountability?

Yes No

If yes, please mention whether manual or electronic.

- Database management - Yes No Manual Electronic
- Project management & planning –Yes No Manual Electronic
- Tracking system (e.g. resolutions)-Yes No Manual Electronic
- Monitoring & evaluation (performance) Yes No Manual Electronic
- Communication system- Yes No Manual Electronic

3.22 Was there a standard process in place pertaining to each Committee/NA/NCOP to conduct of oversight and accountability? If yes, please describe.

3.23 Was the office environment conducive for oversight and accountability staff efficiency and effectiveness? If yes, please mention positives.

3.24 Did the staff Members feel that they had the necessary technology available to effectively conduct oversight and accountability?

Yes No

If no, what is still required?

Section 4: Implementation activities (Practices)

Plenary debates

4.1 Was the task of controlling a debate in the House left to the Presiding Officer? (Circle your choice/s)

- Always
- Sometimes
- Most of the time
- Never
- Other (Please specify) _____

4.2 During the fourth Parliament were subjects of immediate importance debated in time? **Yes No**

4.3 Did the programme allow enough time for debates? **Yes No**

4.4 Were smaller parties allocated adequate time during debates? **Yes No**

4.5 How would you rate the standard of debates during the fourth Parliament?

- Very good
- Good

- Adequate
- Poor
- Very poor

Questions to the executive

4.6 How was the standard of questions and replies during the fourth Parliament?

- Very Good
- Good
- Adequate
- Poor
- Very poor

4.7 Were ministers available to reply to questions?

- Always
- Mostly
- Sometimes
- Never

4.8 Were sanctions in place according to the rules if a question stands over more than once? **Yes No**

4.9 Was a process in place to deal with unsatisfactory, inadequate or flippant replies?

Yes No

4.10 Were supplementary or follow-up questions allowed during the fourth Parliament? **Yes No**

4.11 Are the questions to the President treated the same as those to ministers? **Yes No**

(Please specify)

Motions without notice

4.12 Were motion without notice technically challenging during the fourth Parliament? **Yes No**
(Please specify)

4.13 Did motions without notice need to be cleared with all parties prior to a sitting of the house? **Yes No**

4.14 Did the fourth Parliament deal with congratulatory or general condolence motions before the House? **Yes No**

Notice of motion

4.15 Were Members of the fourth Parliament allowed to bring matters before the House for debate through a motion? **Yes No**

4.16 Please kindly indicate the types of motions utilised by the Members

4.17 Please indicate what issues to consider when drafting a motion.

4.18 Were notices of motion subject to the rules of debate of the House?

Yes No

(Please specify)

Budget votes

4.19 Do you think the budget votes are an effective tool to oversee the executive actions and planning?

Yes No

4.20 Was a budget ever rejected by the fourth Parliament?

Yes No

4.21 What are the consequences of Parliament rejecting a budget?

Member's statements

4.22 Did the fourth Parliament utilise Members statements to conduct oversight?

Yes No

4.23 Were Members of the cabinet as Members of the House allowed to make Members statements?

Yes No

4.24 How were Members of the Executive provided with an opportunity to respond to Members statements?

Statements by Cabinet Members

4.25 What kind of statements were allowed to be made by Cabinet Ministers?

4.26 Did you feel that Members of the cabinet were provided more time compared to Members of Parliament to make statements?

Yes No (Specify)

Petitions

4.27 Did the fourth Parliament have rules that indicate the procedure for dealing with petitions of general nature or unsolicited submissions?

Yes No

4.28 Did the Committee on Private Member's Legislative Proposals and Special Petitions report to the National Assembly on its activities?

Yes No

4.29 Did any timeframes exist for processing of petitions from the date of referral of a petition? **Yes No**

4.30 Please indicate what standard format existed in the fourth Parliament for the public to submit petitions. (Circle all those that are appropriate)

- Written petitions
- Oral petitions
- E-petition

4.31 Did a Petition Act exist in the fourth Parliament? **Yes No**
If yes, mention date passed.

4.32 How did the fourth Parliament encourage the public to submit petition?

4.33 What happened to the public submissions received?

- They were always summarised
- They were always passed on to the relevant Committee as is
- It depends on the specific Committee
- Other: _____

Approval of annual budget and strategic plan

4.34 Did the fourth Parliament always ensured that Government plans and performance are in line with priorities expressed in the MTEF? **Yes No**

4.35 Did the fourth Parliament have a Parliamentary oversight cycle? **Yes No**

4.36 Did the oversight cycle take into cognisance the MTEFW? **Yes No**

4.37 What other important issues did it take into cognisance?

4.38 Was a tool in place to optimise Parliament role in the budget stages?

Yes No

Committee's role in Parliamentary oversight

4.39 Did the programme of the fourth Parliament provide adequate time for implementation of the plans of Committees? **Yes No**

4.40 Was an adequate budget allocated for Committees? **Yes No**

4.41 Did Committees on the fourth Parliament play a central role in expressing Parliament oversight mandate? **Yes No**

4.42 Were Committee meetings open to the public and press? **Yes No**

4.43 Did Committees have formal decision-making power? **Yes No**

4.44 How was the quality of reports produced by Committees?
(Please select what applies)

- Very good
- Good

- Adequate
- Poor
- Very poor

4.45 Please indicate how Committee reports were dealt with by the Houses

4.46 If reports are not adopted or noted by the House what was the main reason? (Please select)

- Poor standard of reports
- Reports not being submitted on time
- Reports not drafted
- Reports not approved by Committee Members

4.47 Were Members trained on the responsibilities and limits of Parliament oversight mandate? **Yes No**

4.48 Were Committees supported by trained and professional staff? **Yes No**

4.49 Did Committee chairpersons have to influence the executive? **Yes No**

4.50 Did a common understanding among Members of Parliament exist on the role and powers of Committees, particularly with regards to oversight? **Yes No**

4.51 Did Committee Members have the research capacity to deal with policy issues effectively? **Yes No**

Fiscal Oversight

4.52 Was the fourth Parliament consulted in the preparation of the national budget? **Yes No**

4.53 How did Parliament exercise fiscal oversight?

- Examination of the finance bill
- Reports from the finance Committee
- Confirmation and approval of the finance bill
- Field visits
- Other (Please specify) _____

4.54 What would happen if Parliament failed to adopt a finance bill?

(Please select one response)

- A temporary budget is used
- The previous budget is renewed
- Other (Please specify) _____

4.55 How did Parliament exercise oversight over the execution of the budget?

4.56 On average how would you describe the quality of inputs during oversight over the execution of the budget?

- Very good
- Good
- Adequate
- Poor
- Very poor

4.57 How do you propose one could ensure improved quality of inputs?

Chapter 9 institutions role

4.58 What external bodies existed during the fourth Parliament for oversight and accountability?

4.59 If they exist, who appoints the external oversight bodies?

4.60 Please describe the relationship between the external oversight bodies and Parliament.

4.61 Did the fourth Parliament give enough value and attention to the reports of Chapter 9 institutions?

Institution	Very often	Often	Not often	Never
PP				
SAHRC				
CRL Commission				
CGE				
AGSA				
IEC				

4.62 How much time (annually) was provided to the commissions for meaningful engagement with Portfolio Committees? (Please select)

- 1-2 hours
- 2-3 hours
- 3-4 hours
- 4-5 hours
- 5-6 hours
- 6-7 hours
- 7-8 hours
- More than 8 hours
- Other (specify)

4.63 Were the institutions independent from Parliament influence?

Yes No

4.64 How do you propose one could develop a better working relationship with Chapter 9 institutions to promote oversight and accountability?

The role of opposition on oversight and accountability

4.65 Were any special powers constitutionally provided to the opposition parties in ensuring executive accountability? **Yes No**

4.66 Were all Members of Parliament obliged to hold the executive accountable? **Yes No**

4.67 Do you think the party list electoral system has an influence on the manner in which oversight is exercised? **Yes No**
(Please specify)

4.68 Which electoral system do you think would be more effective in overseeing the executive? (Please choose)

- Proportional representation electoral system
- Constituency-based electoral system
- Mixture of the above two electoral system

4.69 How important were relations between the opposition and the ruling party for effective oversight during the fourth Parliament?

- Very important
- Important
- Less important
- Not important

4.70 Did the opposition parties received adequate time and resources (human and financial) to oversee the executive?

Yes No

Section 5: Monitoring and evaluation

Monitoring

5.1 Did the fourth Parliament have any mechanism in place for monitoring executive responses?

Yes No

5.2 How was the function of communicating House resolutions to the Minister by the Presiding Officers carried out?

5.3 Were resolutions that require responses annotated on the Order Paper until the responses addressed by the Presiding Officers are received?

Yes No

5.4 Were mechanisms in place for the Presiding Officers to request compliance from the relevant Minister?

Yes No

5.5 Did the rules of the fourth Parliament allow for a Minister to be called to account in the House for non-compliance? **Yes No**

5.6 Did the fourth Parliament have mechanisms to avail resolutions and compliance with outcomes to the House? **Yes No**

5.7 Did the fourth Parliament have database of all stakeholders (addresses of and contact details for ministers and public entities) **Yes No**

5.8 Please indicate the activities involved in the monitoring of resolutions during the fourth Parliament.

5.9 How was the monitoring of responses done during the fourth Parliament?
(Please select)

- Manually done
- Electronically done

5.10 Was a process in place for the Presiding Officers to notify the Leader of Governance Business in the event non-compliance by a Minister?
Yes No

5.11 Did a link exist in the fourth Parliament between the Leader of Government Business and the Parliamentary Liaison Officer to assist with tracking and ensuring compliance?
Yes No

5.12 Did you think the monitoring system was effective?
Yes No

If not, please explain why not.

5.13 How can one improve the monitoring system used?

Evaluation

5.14 How did you evaluate oversight and accountability programmes (failure, successes, efficiency and effectiveness) Mention methods used and timeframes.

5.15 After evaluation, did you produce recommendations for improvement and incorporate these into the institutional processes? **Yes No**

5.16 Did the fourth Parliament have a specific unit dealing with the aspect of Monitoring and Evaluation? **Yes No**

5.17 Who did this unit report to and how does this unit operate?

5.18 Did you have any method of assessing the impact of oversight and accountability? **Yes No**

Thank you for completing the questionnaire

Email or Fax to: Luvuyo Mbete

Email: imbete@parliament.gov.za

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**RE: QUESTIONNAIRE ON EVALUATION OF OVERSIGHT AND
ACCOUNTABILITY DURING THE FOURTH PARLIAMENT 2009 - 2014**

Kindly email or fax the completed questionnaire to Luvuyo Mbete by
28 August 2015

Enquiries: Luvuyo Mbete, Tel: 021 – 403 2516, Cell: 082 962 3728

*Parts of the questionnaire are from Scott (2009) “an analysis of public participation in the South African legislative sector” have been utilised